



Office of Public Guardian Procedure Manual

August 2023

Agency of Human Services
Department of Disabilities, Aging & Independent Living
Developmental Disabilities Services Division

NOTE: To activate the links within this document, click the link.

For additional information:

Agency of Human Services
Department of Disabilities, Aging and Independent Living
Division of Developmental Services

Office of Public Guardian

81 River Street

Suite 208

Montpelier, VT 05609-2210

Phone: 802.828.2143

[Office of Public Guardian | Developmental Disabilities Services Division \(vermont.gov\)](#)

Table of Contents

Part One: Introduction to the Procedure Manual	9
<u>Purpose of OPG Procedure Manual for Guardians</u>	9
<u>Acronyms</u>	9
Part Two: Office of Public Guardian Statutes, Overview and Roles of Specific Positions	10
<u>Guardianship Statutes</u>	10
<u>Overview of OPG</u>	11
<u>Philosophy</u>	12
<u>Position Specific Roles and Responsibilities Within OPG</u>	12
Public Guardian	12
Regional Supervisor	13
Intake and Diversion Specialist	13
Community Financial Specialists	14
Administrative Services Coordinator	14
Director	15
OPG Legal Counsel	16
Part Three: Guardianship and Its Alternatives	16
<u>Overview of Guardianship</u>	16
<u>Rights of All Individual's Under Guardianship</u>	16
<u>Alternatives to Guardianship</u>	18
Direct Deposit, Electronic Payment, and Joint Accounts	19
Power of Attorney	19
Representative Payee	19
ABLE/STABLE Accounts	20
Trusts	20
Case management/Service Coordination	21
Supported Decision Making	21
Release of Information	21
Health Care Agent/Advance Directive	21
Part Four: Roles of the Guardian	22
<u>Guardians as Surrogate Decision Maker</u>	22
<u>Person-Centered Decision Making and Planning</u>	22
<u>Substituted Judgement</u>	23
<u>Best Interest</u>	23
<u>Informed Consent</u>	24
<u>Decision-Making Process</u>	24
<u>Least Restrictive Alternative</u>	26
<u>Promoting Growth and Self-Reliance</u>	26
<u>Dignity of Risk</u>	27
<u>Balancing Advocacy and Diplomacy as a Guardian</u>	27

Part Five: Adult Guardianship in Vermont	28
<u>Private Guardian</u>	29
<u>Private Professional Lawyers/Conservators</u>	29
<u>Public Guardian</u>	29
<u>Eligibility for Public Guardianship</u>	29
Eligibility for Adults with Developmental Disabilities Title 18 V.S.A. §9301	29
Eligibility for Mentally Disabled Adults Age 60 or Over Title 14 V.S.A. §3061	30
Part Six: Legal Process and Powers of Guardianship	31
<u>Title 18: Family Court Guardianship Process</u>	31
Process – Petition, Lawyer, Evaluation, etc.	31
The Four Powers of Guardianship Title 18 – VSA 18 §9310	32
No Financial Power	33
<u>Title 14: Probate Court Guardianship Process</u>	33
Process – Petition, Lawyer, Evaluation, etc.	33
Probate beginnings: “DD in Probate”	35
Emergency Guardianships	35
The Six Powers of Guardianship in Title 14 – VSA 14 §3069	36
<u>Final Guardianship Orders Titles 18 and Title 14 - Read Them Carefully</u>	36
Part Seven: OPG Authority, Duties & Responsibilities, In-Depth Topics Within Each Power	37
<u>Authority and Duties of Commissioner as Guardian</u>	37
18 V.S.A. § 9313. Duties of Commissioner When Providing Guardianship Services	37
14 V.S.A. § 3071 Duties of the Commissioner When Providing Guardianship Services	38
<u>Guardianship Responsibilities</u>	38
Individual’s New to Guardianship – Process, Assessment and Necessary Actions	38
Tips for Communicating with the Person	39
<u>In-Depth Topics within Each Power</u>	40
Power of General Supervision	40
Power of Medical/Dental	46
Power of Legal	58
Power of Contracts	59
Power to Exercise General Financial Supervision Over the Income and Resources of the Person-Title 14 Only	60
Power of the Sale or Encumbrance of Property	64
Part Eight: Guardian’s Role with Other Entities	67
<u>Sharing The Court Order with Service Providers and Others</u>	67
<u>Guardian Consent and Notification Requirements</u>	67
Situations Requiring Immediate Notification	67

Situations Requiring Prior Consent	68
Situations Requiring Notice, but not Prior Consent	68
<u>Transitioning from Department of Children and Families (DCF)</u>	69
<u>Custody to Adult Guardianship</u>	
<u>Relationship with Family and Friends</u>	70
Part Nine: Other Guardianship Topics and Responsibilities	70
<u>Limitations of Guardianship Powers</u>	70
<u>Alerting the Commissioner of DAIL and any other relevant</u>	70
<u>Department Commissioners</u>	
<u>Addressing an Individual's Rights, Responsibilities, and Choices</u>	71
Firearms	71
Dangerous Weapons	71
Other Potential Weapons	71
Weapons in the Home	72
Mail	72
Internet Safety	73
Sexuality	74
Gender Identity	74
Diversity and Inclusion	75
Marriage/Civil Union	75
Divorce	76
Pregnancy-Mother	76
Paternity-Father	77
Parenting	78
Jury Duty	79
Voting	79
Marijuana, THC, CBD Products	80
Smoking/Vaping (Individual under Guardianship)	81
Smoking/Vaping (Household Members)	81
Spiritual Beliefs	82
Services for Deaf, Hard-of-Hearing, DeafBlind	82
Addressing Emotional and Behavioral Issues	83
Requests for a Different Public Guardian	84
Individual Disagrees with a Guardian's Decision	85
Wills	85
ABLE/STABLE Accounts	85
Guardianship Services (GS) Fund	87
DDSD Special Services Fund (SSF)	87
<u>Clients Who Pose Risks to Public Safety and/or Engage in Criminal</u>	89
<u>Behavior</u>	
Individual is Suspected of Abuse, Neglect, or Exploitation of	89
Vulnerable Adult or Child	
Arrest of Person Under Guardianship	89

Individuals on Act 248 and the Guardian’s Role	90
Individuals in the Custody of Department of Mental Health (DMH) on Orders of Non-Hospitalization (ONH) and the Guardian’s Role	92
Individuals in the Custody of Department of Corrections (DOC) and the Guardian’s Role	93
Problematic Sexual Behaviors	94
Part Ten: Guardianship Modification	94
<u>Modification or Termination of Guardianship</u>	94
<u>Death of a Person Under Guardianship</u>	95
Death of an Individual (Expected)	95
Death of an Individual (Unexpected)	96
Additional Resources for Payment of Funeral Expenses	97
Part Eleven: OPG Representative Payee Services	97
Part Twelve: Understanding Government Benefits	99
<u>Social Security Administration (SSA)</u>	99
Retirement, Survivors, Disability Insurance (RSDI)	99
Supplemental Security Income (SSI)	99
Wage Reporting Requirements for Individuals who Receive SSI	100
Social Security Disability Income (SSDI)	100
Impairment Related Work Expenses (IRWE)	101
Social Security, Earned Income and Income taxes	101
Representative Payee	101
Room & Board or Patient’s Share Rates	102
<u>Center for Medicaid and Medicare Services Medicare (CMS)</u>	103
Medicare and it’s parts	103
State Health Insurance Program (SHIP)	104
Dual Eligibility-Medicare and Medicaid	104
Medicaid	105
Part Thirteen: Understanding Services Available in VT	111
<u>VT Adult Long-Term Services and Supports Reference Table</u>	111
<u>Services Administered by Developmental Disabilities Services Division (DDSD)</u>	114
Home and Community Based Services Waiver (HCBS)	114
Developmental Services Providers	116
<u>Services Administered by Adult Services Division (ASD)</u>	117
Adult Services Division (ASD)	117
Adult Day Services	117
CFC Moderate Needs	117
Area Agencies on Aging	117
Assistive Community Care Services (ACCS)	118
Choices for Care (CFC)/Long Term Care/Highest Needs	118

Money Follows the Person (MFP)	120
Traumatic Brain Injury (TBI) Program	120
<u>Services Administered by Department of Mental Health (DMH)</u>	120
Outpatient MH Services	120
Community Rehabilitation Services CRT	121
Emergency Services	121
Intensive Residential Recovery (IRR)	121
Psychiatric Hospitalization	122
<u>Filing Grievances & Appeals on Behalf of the Individuals</u>	122
<u>Services Administered by Department of Children and Families (DCF)</u>	122
Food Assistance	122
Fuel Assistance	122
<u>Other Services and Resources</u>	122
Vermont Chronic Care Initiative (VCCI)	123
Pre-Admission Screening and Resident Review (PASRR)	123
Supports and Services at Home (SASH)	123
Vermont 211	124
Lifeline Services	124
<u>Private Pay- Individuals with Resources</u>	124
Part Fourteen: Abuse, Neglect and Exploitation	124
<u>Abuse</u>	124
<u>Emotional Abuse</u>	126
<u>Neglect</u>	127
<u>Exploitation</u>	129
<u>Reporting Abuse, Neglect, Exploitation or Improper Care to Adult Protective Services (APS) or Survey and Certification (S&C)</u>	129
Making a Report	130
Individual is Victim of a Crime, Abuse, Neglect, or Exploitation	130
Part Fifteen: OPG Programmatic Guidelines	131
<u>Orientation and Training of Guardians</u>	131
<u>OPG Staff Meetings, Internal and External Trainings</u>	132
<u>OPG On Call System</u>	132
<u>Caseload Assignment Considerations</u>	133
Maximum Caseload Guidelines	134
Transferring a Person to another Guardian	134
<u>Performance Expectations and Major Job Duties</u>	135
Public Guardians	135
Regional Supervisors	136
<u>Components of Supervision</u>	137
<u>Guardianship in a State of Emergency</u>	138
<u>Conflicts of Interest in Guardianship</u>	138

Conflicts Between Individuals Under Guardianship	138
Conflicts Caused by Other Jobs or Roles	138
Political Activity	139
Conflicts Of Interest Pertaining to Property and Money	139
<u>Documentation Requirements</u>	140
Demographic information	140
Case Logs	140
Case Notes	140
Title 18 Required Documentation	141
Title 14 Required Documentation	142
<u>OPG Case Files and Record Retention Requirements</u>	145
Electronic Case Files	145
Paper Case Files	149
Record Retention and Disposal	150
<u>Privacy and Confidentiality</u>	151
Privacy	151
Confidentiality	151
Mandated Reporting	151
Health Insurance Portability and Accountability Act (<u>HIPPA</u>)	152
Sharing Case Records	152

State of Vermont Office of Public Guardian Procedure Manual

Definitions:

Person or individual is used throughout the manual to refer to the “person under guardianship” as referenced in the guardianship law.

Guardian is used throughout this manual to refer to “Public Guardian” as defined below.

Part One: Introduction to the Procedure Manual

Purpose of OPG Procedure Manual for Guardians

This procedure manual is intended to be a training and reference guide for guardians and supervisors at the Office of Public Guardian (OPG) outlining the mission, responsibilities, and expectations of Public Guardians. Public guardians’ work is guided by statutory requirements, court orders, Department of Disability, Aging and Independent Living (DAIL) policies and procedures, national standards, but most importantly, it is guided by a strong sense of advocacy and ethics. While comprehensive, this manual cannot provide guidance for every conceivable situation or individual circumstance that may arise. Decision making can be a very complicated process and the personal circumstances of individual clients vary greatly. It is expected that guardians will use this document as a reference tool in addition to reviewing the guardianship statutes, regular communication with their supervisors, the Director of the Office of Public Guardian, and OPG’s legal counsel when necessary. The manual will be reviewed at least annually and updated as needed to capture new or changing information.

Acronyms

AAA – Area Agency on Aging

AAG – Assistant Attorney General

ABLE/STABLE - Achieving a Better Life Experience, sometimes called STABLE

AFC - Adult Family Care

AG – Attorney General

AHS – Agency of Human Services

APS – Adult Protective Services

CFC – Choices for Care

CFS – Community Financial Specialist

CIR – Critical Incident Report

COLST – Clinician’s Orders for Life-Sustaining Treatment

CRT – Community Rehabilitation and Treatment

DA – Designated Agency
DAIL – Department of Disabilities, Aging and Independent Living
DCF/FSD - Department for Children and Families/Family Services Division
DD – Developmental Disability
DDSD – Developmental Disabilities Services Division
DLP – Disability Law Project
DNR/DNI – Do Not Resuscitate/Do Not Intubate
DOC – Department of Corrections
DRVT- Disability Rights Vermont
DVHA – Department of Vermont Health Access
EIN - Employee Identification Number
GAL – Guardian ad litem
HCBS – Home-and Community-Based Services
HIPPA - Health Insurance Portability and Accountability Act
IDD- Intellectual or Developmental Disability
IDS – Intake and Diversion Specialist
IEP – Individualized Education Plan
ISA – Individual Support Agreement
LTC – Long Term Care
LTCCC – Long Term Care Clinical Coordinator
NGA – National Guardianship Association
OPG – Office of Public Guardian
PASRR – Pre-Admission Screening and Resident Review
PHI - Protected Health Information
POA – Power of Attorney
POC – Plan of Care
QDDP – Qualified Developmental Disabilities Professional
SASH – Support and Services at Home
SA – State’s Attorney
SLP- Shared Living Provider
SSA – Social Security Administration
SSA – Specialized Service Agency
SSDI –Social Security Disability Income
SSI – Social Security Income
VA – Veterans Affairs
VSA – Vermont Statutes Annotated

Part Two: Office of Public Guardian Statutes, Overview and Roles of Specific Positions

Guardianship Statutes

Each guardian should bookmark and/or print the Statutes below for easy and frequent reference. Plan to re-read them as questions come up to see if the statute addresses the issue. Title 14

Chapter 111 is lengthy and much of it pertains to children and is not relevant to OPG. The Subchapters that are relevant include: 3,4,5,6,12, and 13. When printing out the statute, it may be helpful to only print the relevant Subchapters.

[V.S.A Title 18 Chapter 215 Guardianship for People with Developmental Disabilities](#)
[V.S.A Title 14 Chapter 111 Guardianship](#)

Overview of OPG

OPG operates within the Vermont Developmental Disabilities Services Division (DDSD) in DAIL. Individuals receiving guardianship from OPG are ordered into the guardianship of the Commissioner of DAIL and assigned guardians act as designees of the Commissioner.

Under Vermont law, OPG is authorized to provide guardianship for:

- Adults (18 or older) with developmental disabilities (DD), **or**
- Persons 60 years of age or older (older Vermonters) with significantly impaired cognitive functioning, **and**
- Who require assistance with basic life decisions, **and**
- For whom a suitable and willing private guardian cannot be found.

In addition to serving as guardian, OPG:

- Serves as **representative payee** receiving and managing Social Security or Supplemental Security Income (SSI).
 - o Many of these individuals are also under public guardianship.
 - o One fifth of these individuals do not have a guardian and the rep payee service is an effective alternative to guardianship.
- Provides short-term **consultation** to individuals or teams when this can provide a less restrictive alternative to guardianship or ease the transition out of guardianship.
- Provides **public education** on guardianship and alternatives to guardianship.
- **Recruits and assists private guardians** and assists in developing individualized alternatives to guardianship.
- **Arranges and manages court-ordered evaluations** for both public and private guardianship proceedings.

During SFY 2022, the Office of Public Guardian was staffed by 29 full-time employees and 1 part-time temporary employee, including:

- 19 Guardians and 5 Supervisors with caseloads ranging from 25-35 individuals
- 1 Administrative Services Coordinator
- 1 part-time Administrative Services Coordinator
- 2 Community Financial Specialists (representative payee) for 287 individuals
- 1 Intake and Diversion Specialist with partial caseload
- 1 Director with partial caseload

Philosophy

OPG's philosophy guides the relationship between a guardian and the person under guardianship. It is our philosophy that we assist and empower the people we serve to make decisions guided by the following:

- We seek to give people every opportunity to express themselves and make decisions about their own lives.
- We seek personalized services to maximize an individual's potential and enhance his or her quality of life in the least restrictive manner.
- We strive to educate families, professionals, and community members about the abilities of the people we serve.
- We believe that all human beings have value. Each person contributes to the community in a unique way. Everyone's quality of life is enriched when a community embraces diversity.
- We believe in total community inclusion. All people have a right to be integrated into their communities in a manner that recognizes the dignity of risk and safeguards against abuse, neglect, and exploitation.

Position Specific Roles and Responsibilities Within OPG

Public Guardian

A public guardian works in the OPG, which is part of DDS, housed in DAIL, which is under the umbrella of the Agency of Human Services. A public guardian provides guardianship services to persons with developmental disabilities or to persons aged 60 or older, who lack decision making capacity and have been placed under guardianship by a court order. Examples of the duties of this role include:

- Conducts assessments of client's needs and resources, evaluates options, and develops appropriate plans, including encouraging increased self-sufficiency where appropriate.
- Arranges or assists client to arrange medical, financial management, educational, housing, employment, public benefits, legal representation, social and other services as needed.
- Delivers casework services in a manner which is positive, enhances client dignity, and is sensitive to client desires.
- Appears in the Probate and Family Divisions of the Superior Court for a variety of court proceedings.
- Works collaboratively with a wide variety of teams and community partners to provide person centered services and supports for individuals under guardianship.
- Determines when client self-sufficiency has been achieved and recommends termination of guardianship in such cases.
- Makes difficult decisions such as placement in protective settings, selling financial assets such as homes and property, obtaining or withholding of medical treatment, including withdrawal of life support.

- Continuously seeks to identify private sector guardians and recommends transfer of guardianship when appropriate.
- Keeps accurate and timely case records and financial reports for clients and prepares periodic reports as required.

Regional Supervisor

A Regional Supervisor is assigned to supervise several public guardians in a geographic area. Supervisors should carry a smaller caseload than public guardians. In addition to the duties outlined above, other duties assigned to the supervisor include:

- Facilitates the hiring of new guardians. Trains and supervises guardians assigned to a geographic location or area of specialization.
- Assigns caseloads, monitors staff performance and documentation requirements, provides training and support to staff, oversees maintenance of client records, and always assures coverage of total caseloads.
- Provides ongoing assistance to guardians with novel, high risk or challenging situations.
- Completes performance evaluations and manages disciplinary action when needed.
- Provides training about guardianship to organizations such as Designated Agencies, healthcare providers, schools, etc. Responds to wide ranging questions about guardianship and guardianship-related issues.
- Manages referrals for public guardianship for persons with developmental disabilities by gathering information from all parties involved and exploring any less restrictive alternatives that may be put in place and/or viable options for private guardianship.
- Assists the OPG Director with policy and protocol development.
- Serves as the OPG Director in the director's absence.

Intake and Diversion Specialist

The Intake and Diversion Specialist (IDS) manages all incoming Title 14 elder guardianships. Incoming guardianships for people with developmental disabilities are primarily managed through the regional supervisors but occasionally an incoming person with DD will initially be managed by the IDS.

All incoming questions or requests for OPG to become a guardian for an elder should be directed to the IDS. The IDS will gather information about the person and assist the interested party to explore alternatives to public guardianship prior to a petition being filed. Requests for OPG to become guardian for a person with a developmental disability should be directed to the regional supervisor covering the area where the person receives services. Requests for general information about guardianship can also be directed to the IDS, although guardians can choose to have those conversations if they feel comfortable doing so.

The IDS also provides support to private guardians looking for assistance with carrying out their duties. If guardians are approached about this kind of support, they should direct the person to the IDS.

If all alternatives to public guardianship have been explored and it is determined that OPG guardianship is appropriate, the IDS will create an initial file with information about the person in the electronic case file system. The assigned guardian is responsible for reviewing notes created by the IDS and updating the file as necessary.

Community Financial Specialists

The Community Financial Specialists are the representative payees for OPG and are responsible for managing the Social Security (SS, SSDI, SSI) benefits, VA benefits, Pension, Railroad benefits and 3SquaresVT benefits of some individuals under public guardianship and others who are not. This support requires managing monthly deposits and payments for various areas of need (housing, food, medical, personal items). This position is also responsible for reporting back to the SSA/VA, assisting with public benefit applications/reviews, and collaborating with the SSA around issues that arise such as overpayments.

Administrative Services Coordinator

The Administrative Services Coordinator supports staffs' ability to work efficiently by bridging the gap between OPG and departmental IT, HR, Operations, and many other resources. Additionally, the Administrative Services Coordinator plays an essential role in the OPG's communications and coordination surrounding guardianship petitions from the State's Family and Probate courts. This position is the sole administrative support for OPG, which has 28 full-time staff distributed around the state who provide essential services of guardianship and representative payee supports to over 800 adults with developmental disabilities or age-related impairments.

The main responsibilities of this position include:

- Coordinating expenses, travel, conferences and trainings for OPG staff
- Event planning
- Maintaining the organization chart for OPG
- Updating the phone chart for the answering service
- Oversight of the PCard (purchasing card)
- Coordinating performance evaluations
- Maintaining website/intranet
- Electronic and paper filing
- Guardianship Services Fund Liaison with the Business Office
- Ordering supplies
- Submitting invoices
- Oversight of equipment (computers, phones, fax/scan/copiers/printers, etc.)
- Technical assistance with equipment
- Oversight of office furniture
- Fleet Car Liaison
- Manages Contracts
- VTHR Delegate (recruiting, RFR's, PARs, etc.)

- Maintains Case Logs
- Manages Guardianship Evaluations, Hearing/Legal Notices, and Guardianship Orders
- Oversight of the Bond
- Well Sky (SAMS) administrator/trainer
- Answers Main OPG office phone line
- Provides list of clients to DDS
- Submits LANDesk tickets
- Coordinates and takes meeting notes at the DAIL Ethics Committee
- Manages Critical Incident Reports
- Dartmouth Patient Portal liaison

Guardians who require assistance with any of the items above should discuss their needs with the Supervisor and contact the Administrative Services Coordinator for support or instructions when needed.

Director

The Director of OPG is responsible for the overall management, design and development of the program, the work carried out by a full-time staff of 29 and 1 part-time and directly supervises 6 regional supervisory staff, a full-time Administrative Services Coordinator and a part-time Administrative Services Coordinator. Additional duties of the director include:

- Provides leadership and support to guardianship staff in regional operations.
- Collaborates with community-based agencies, such as designated agencies, area agencies on aging, legal aid, courts, etc.
- Oversees recruitment/hiring processes for all staff, and provides direction for staff training, development and assurance of quality in service delivery.
- Works with Family and Probate Courts statewide, including obtaining time-sensitive, court-ordered evaluations for guardianship proceedings, assures evaluations meet quality standards prior to submission, and consults with DAIL's legal department in responding to issues raised in court proceedings, such as guardianship petitions, evaluations, terminations, modifications, status conference requests, stipulations etc.
- Reviews and responds as necessary to critical incident reports involving guardianship clients.
- Represents the guardianship program and its staff as a member of the DDS Leadership Team.
- Responds to requests for information from the courts, the public and other parties interested in public guardianship.
- On request, provides training and support for private guardians by phone and/or personal consultation, and education about guardianship services to community providers.
- Develops and maintains the OPG Field Guide.
- Maintains a small guardianship caseload.
- Serves as a member of the DAIL Ethics Committee, and reviews, consults and supports guardianship staff when preparing a case for referral/review by the Committee.

- Responds and assists as needed to situations such as client deaths, missing clients, or specific critical incidents, to assure all procedures are followed; necessary reports are filed, particularly related to serious injury, missing persons and/or deaths.

OPG Legal Counsel

DAIL has two types of legal counsel, “in house” attorneys who provide legal support to the Department and are DAIL staff, and one Assistant Attorney General (AAG) who is assigned to represent DAIL in matters involving the courts but reports to the Attorney General’s Office (AGO). For OPG, most interactions are with the AAG, but in some circumstances, both types of lawyers will be involved. The AAG is only involved in a subset of OPG cases, which includes all filings/cases in Family Court for OPG such as guardianship filings and Relief from Abuse Orders. Additionally, the AAG is typically involved in situations where OPG staff will be testifying in court, complicated/contentious situations that may result in disagreement or litigation, new cases filed on behalf of APS, and unique situations that require legal advice. Of significant note, the AAG is OPG’s lawyer, not the lawyer for OPG clients. When a guardian requires assistance from the AAG, they should notify the Regional Supervisor and/or Director, and a plan will be made for either a scheduled or immediate contact. It is important to keep the Supervisor and Director in the loop in communications.

Part Three: Guardianship and Its Alternatives

Overview of Guardianship

A guardian is a person or organization appointed by the court to assume responsibility for making decisions on behalf of another person and or their estate. A guardian is appointed if the court finds an individual is unable to make certain reasoned decisions and is unable to manage their personal and/or financial affairs. Public guardians are accountable to the court for their actions, as well as to OPG.

Upon turning age 18, all Vermonters are presumed to be competent to make their own decisions and to have a right to self-determination. A parent is no longer considered the guardian of a child once the individual turns 18, even if the child has significant disabilities.

Guardianship is generally intended to be a supportive and protective measure but is also a profound restriction of a person’s rights. Under Vermont law, guardianship for adults must encourage self-determination and independence and to the extent of the guardian’s decision-making authority must be based upon the abilities and needs of the individual. Guardianship should be utilized as little as possible and only when absolutely necessary.

Rights of All Individual’s Under Guardianship

Title 14, Chapter 111 § 3068a [Vermont Laws](#)

A person under guardianship retains the same legal and civil rights guaranteed to all Vermont residents under the Vermont and U.S. constitutions and all the laws and regulations of Vermont and the U.S. These rights include:

- (1) The right to participate in decisions made by the guardian and to have personal preferences followed unless:
 - (A) The preference is unreasonable and would result in actual harm; or
 - (B) The person under guardianship does not have a basic understanding of the benefits and consequences of his or her chosen preference.
- (2) The right, without interference from anyone, to retain an attorney and to communicate freely with counsel, the court, ombudsmen, advocates of their own choosing, and other persons authorized by law to act as an advocate for the person under guardianship.
- (3) The right to retain an attorney and seek legal advice independently without consent of the guardian, provided that any legal fees not authorized by the guardian are subject to review and approval by the court.

Even though the person may lose certain rights during the guardianship process, many persons retain all other rights. It is the guardian's responsibility to make sure they are not violated. These rights include all those guaranteed by federal and state constitutions and laws as well as the specific rights to:

- Be protected against abuse and neglect
- Be treated with dignity and respect
- A safe, sanitary and humane living, working and learning environment, which is the least restrictive environment for the person's needs and conditions
- Right and access to private and uncensored communication with others by mail, telephone, email, or video chats
- Bodily privacy
- Personal visits with people of their choosing
- Religious expression in the manner of their choice
- Interpersonal relationships and sexual expression
- Exercise control over all aspects of life that the court has not delegated to the guardian
- Appropriate services suited to the person's needs and conditions, including mental health services
- Right to refuse services, including mental health services
- Have the guardian consider the person's personal desires, preferences and opinions particularly regarding ethic, religious and cultural values
- Exercise the option to procreate
- Equal treatment under the law, regardless of race, religion, creed, sex, age, marital status, sexual orientation, or political affiliations
- Have explanations for any medical procedures or treatment, including information about the benefits, risks, and side effects of the treatment, and any alternative procedures or medications available
- Right to refuse medical procedures, treatment or medications

- Have personal information kept confidential including withholding certain information the person may not want his/her family to know
- Prudent financial management of property and information regarding how that property is managed
- Notice of all proceedings related to the guardianship
- Review personal records, including medical, financial, and treatment records
- Speak privately with an attorney, ombudsman, or other advocate
- Petition the court to modify or terminate the guardianship including the right to meet privately with an attorney or other advocate to assist with this legal procedure
- Not be involved in research projects
- Continuous review of the need for full or partial restoration of rights
- Bring a grievance against the guardian or request the court to review the guardian's actions without retaliation
- Request removal and replacement of the guardian

(A person under guardianship may also be under the supervision of the Department of Corrections or be in the custody of the Commissioner of DAIL under an Act 248 Order. In these instances, some the rights listed above may be restricted for a person in the interest of public safety.)

Alternatives to Guardianship

Independence and self-determination are important to all people. Because guardianship for adults is intrusive and involves the removal of rights from an individual, it should be considered only after reasonable alternatives have been considered. Some alternatives are easier and less costly than court procedures; others are not.

Like guardianship itself, the success of alternatives to guardianship depends greatly upon the skill of the support people for the individual, and the relationships among the individual's circle of support. Parents, adult children, service providers or others who are supporting an individual with any of the alternatives listed in this section should:

- Be willing to listen to the person's voice
- Honestly assess the person's ability
- Be willing to respect the person's dreams
- Be available in crisis
- Be willing to do needed paperwork
- Be a creative advocate
- Keep the individual informed/involved

Often guardianship is not necessary to meet the needs of an individual who is having difficulty handling his or her personal, medical or financial affairs. The OPG Intake and Diversion Specialist (IDS) is well versed in the alternatives listed below and should be consulted when a family member, hospital or agency staff person is seeking information about guardianship. There

are alternatives that provide supports for the person or for substitute decision making authority in specific areas, and these should be used instead of guardianship whenever possible.

Direct Deposit, Electronic Payment, and Joint Accounts

Banks offer a variety of services that can provide tools to help manage a person's funds. Sometimes the problems with keeping track of a person's funds can be solved through direct deposit of income payments. Bank accounts can be set up for automatic payment of regular bills, such as telephone, cable, insurance, car payments, rent, or mortgage. An ATM card can be issued with withdrawal limits, if necessary, to help prevent exploitation and over drawing the account. Joint signature accounts can provide for the requirement of two signatures or simply for a second signer when the individual is ill and unable to sign checks.

Power of Attorney

A power of attorney (POA) is a written authorization to represent or act on another's behalf in private affairs, business, or some other legal matter. Often people execute a power of attorney when they are away from home or hospitalized to ensure that their financial affairs are monitored. It can be revoked at any time. The document must be notarized and signed by the agent in order for it to be valid. It is not necessary to go to court to complete this action. [VT Law Help - Power of Attorney](#)

A power of attorney can be written in such a way that it remains in effect even if the person who is being helped with his or her affairs becomes incapacitated. This is called a durable power of attorney. A power of attorney can also be written so that it does not become effective until/unless the person becomes incapacitated. Someone who is already incapacitated or not able to make decisions for themselves cannot give another person power of attorney. A financial power of attorney should be drafted by a lawyer.

A person designated as the agent under a properly executed POA trumps a financial guardian's power unless the Probate Court has specifically decided that the POA is no longer valid.

In instances when POAs are discovered after someone comes into guardianship:

- If you discover a POA and the agent is willing and appropriate to manage the person's financial affairs, you should notify the court of the POA and request that OPG be released as financial guardian.
- If you discover a POA and the agent is either unwilling, or is inappropriate, to manage the person's financial affairs, you should notify the court of the POA and ask that the court nullify the POA.

Representative Payee

A person who receives Social Security, SSI benefits, Railroad Retirement, Black Lung, or VA benefits may have a "payee" to receive the benefits and pay bills. The payee usually opens an account as payee and the benefits are sent monthly by electronic deposit. The payee may use the

benefits only for the benefit of the person with a disability, such as to pay rent or buy food and clothing. The payee is accountable to the Social Security Administration or other government agency and must file periodic reports as well as notify the agency of any changes in the person's status or income. If an individual does not have significant income except government benefits and has a representative payee, there is no need for a financial guardian.

Representative Payee Services can be provided through a variety of local mental health/developmental service agencies, Area Agencies on Aging, the VA, nursing homes and private individuals. These resources should be explored first before requesting this service through OPG.

OPG's Community Financial Specialists (CFS) provide rep payee services if there are no other options for people under OPG guardianship or as a tool to end or avoid guardianship. The Regional Supervisor and/or Director need to be consulted when access to this service is requested as an alternative to public guardianship or for any individual new to public guardianship who does not have access to a community payee. **See Part Eleven: OPG Representative Payee Services.**

ABLE/STABLE Accounts

An [Able/Stable Account](#) is an investment account available to eligible individuals with disabilities who reside in the State of Vermont. STABLE Accounts are made possible by the federal Achieving a Better Life Experience ("ABLE") Act. STABLE Accounts allow individuals with disabilities to save and invest money without losing eligibility for certain public benefits programs, like Medicaid or SSI/SSDI. Earnings in the STABLE Account are not subject to federal income tax, so long as the money is spent on Qualified Disability Expenses.

STABLE Accounts have some similar features to normal bank accounts, but they are not checking or savings accounts. STABLE Accounts are investment accounts, similar to 529 college savings accounts or 401(k) retirement accounts. When money is deposited into a STABLE Account, the money can be invested in different options that the individual or guardian chooses. Money can be withdrawn and spent when needed. A STABLE Account also allows individuals to grow their money and to save long-term for disability expenses.

Trusts

A trust is a legal plan for placing funds in the control of a trustee for the benefit of the individual. Although the trustee controls the funds, the trust document dictates how the money is to be handled and for whose benefit it should be spent. For example, one spouse can place his or her assets in a trust for the benefit of the other spouse. Trusts may affect a person's eligibility for various public benefit programs, and an attorney should be consulted before executing a trust. Trusts are usually used when someone wants to give or bequeath a significant amount of funds or property to a person who will need assistance in managing the funds or property. If all of a person's funds are in a trust and the trustee is reliably paying the person's bills, there may be no need for a financial guardian. For additional information see **Part Twelve: Understanding Government Benefits/ Center for Medicaid and Medicare Services Medicare (CMS)/ Medicaid/ Medicaid Qualifying Trusts.**

Case Management/Service Coordination

An active service coordinator/case manager through a social services agency can often provide the supports, advocacy, and assistance that a person needs without the need for a guardian. Case management services can be provided by a Designated Agency (DA), Specialized Service Agency (SSA), Area Agency on Aging (AAA), SASH Case Manager, Social Worker in a long-term care facility, Home Health Care agency, CRT (Community Rehabilitation and Treatment) Case Manager or a Community Health Team.

Supported Decision Making

Supported decision-making (SDM) is a term used to describe a series of relationships, practices, arrangements, and agreements designed to assist an individual with a disability to make and communicate to other people decisions about their life. It can be a formal or informal network of friends and family and can often be sufficient to provide the supports and assistance that a person needs and should be used whenever possible. [Supported Decision Making \(sdmvermont.com\)](http://sdmvermont.com)

It is based on the common principles affirming that:

- Everyone has a right to make their own decisions.
- People with disabilities have a right to be their primary decision maker.
- Good decision making is a skill that can be learned.
- SDM should be available to all who choose to use it.
- Everyone has a right to fail without serious injury or loss of rights.
- With good SDM, guardianship should be a last resort. With effective use of SDM, guardianship should not be needed. Relationships need to be valued, created, mentored and supported.
- All people need help making decisions. We are all diverse, we all make decisions individually and with support, at different times in life.

Release of Information

A release of information signed by an individual allows information sharing in several situations including medical care, education, home and community-based supports and other confidential information. A release of information to trusted individuals allows those individuals to help the person with a disability or cognitive impairment make decisions.

Health Care Agent/Advance Directive

Once someone is 18 years of age or older, it is important for them to appoint a health care agent who can speak on their behalf if they are unable to speak for themselves. The agent can be a relative or friend 18 years of age or older. The individual signs a legal document called an Advance Directive designating a person to make health care decisions for him or her in the event something happens. This can prevent the need for guardianship. There are several forms available that vary in detail and specificity of wishes. Any of these Advance Directive forms,

properly signed and witnessed, designate a Health Care Agent to make medical decisions if the person cannot speak for themselves, and some provide detailed information about health care goals and treatment priorities. In Vermont, it is not automatically a person's next of kin (spouse, parent, adult sibling, etc.) who can make decisions if a person is unable to speak for themselves. It is important to note that an Advance Directive is **not** the same as a DNR/COLST form. The [Vermont Ethics Network](#) and [18 V.S.A. §9731](#) provides additional information about advance planning, executing an advance directive and links to the forms.

A Health Care Agent appointed in an advance directive, has exclusive authority to make medical decisions over an appointed guardian. Individuals under guardianship cannot complete an advance directive.

Part Four: Roles of the Guardian

The following sections are insertions from the *“The Fundamentals of Guardianship: What Every Guardian Should Know”* by the National Guardianship Association Handbook.

Guardians as Surrogate Decision Maker

Guardians have many roles in carrying out their responsibilities. Every guardian needs to be a surrogate decision maker, an advocate, a coordinator of services, a monitor of services, and a financial manager. Guardians must also have some knowledge of law, medicine, psychology, banking, pharmacology, insurance, real estate, accounting and human nature. They should be compassionate, persistent, a good negotiator, and not easily flustered. In many instances, they need to be prepared to be available “on-call” 24/7.

The fundamental responsibility of the guardian is to make decisions about the person's personal and financial affairs, as ordered by the court. In doing so, guardians should exercise the utmost care and diligence, always with the idea of protecting the self-reliance, autonomy, independence, and rights of the person.

While most guardianship statutes and court orders describe what decisions guardians are authorized to make, most give little guidance on how to make those decisions. The NGA Standards are useful in helping guardians understand the “how-to” of surrogate decision making.

Person-Centered Decision Making and Planning

The person under a guardianship should be at the center of all decisions and plans for the future. We call this being “person centered.” Person-centered decision making requires the guardian to identify and advocate for the individual's goals, needs, and preferences. Currently expressed wishes or spoken choices of the person should be supported to the greatest extent possible. Goals are what are important to the person, whereas preferences are specific expressions of choice.

NGA Ethical Principle 2 states: A guardian involves the person to the greatest extent possible in all decision making. Whenever possible, the person should be consulted and encouraged to make

choices to the extent he or she is able. This includes participating in the decision-making process and acting on his or her own behalf in appropriate instances. The person should be provided with every opportunity to exercise individual rights to the extent he or she is capable. In making a person-centered decision, the guardian shall first ask the person what he or she wants. If the person has difficulty expressing those wants, the guardian shall do everything possible to help the person communicate.

Person-centered planning refers to a family of approaches designed to guide change in a person's life. This type of planning is carried out in alliance with the person, their family, and their friends, and is grounded in demonstrating respect for the dignity of all involved. The intent is to discover and understand the unique characteristics of the person so that he or she has positive control over the life desired; is recognized and valued for contributions to the community; and is supported in a web of relationships within his or her community.

Person-centered planning requires the guardian to actively engage the person in the planning process, let the person identify what is important, identify what the goals should be, and what makes him or her happy. The root of a strong person-centered plan is separating "important to" from "good for." This moves planning away from an emphasis on health and safety to giving happiness and self-determination more prominent roles. If the person's disability hinders his or her involvement, the guardian will need to research the person's known preferences to augment the planning while continuing to find successful communication avenues (NGA Standard 9).

Substituted Judgement

If a person's incapacity prevents the guardian from effectively determining the person's current wishes in order to make a person-centered decision, the guardian may utilize the principle of substituted judgement in making decisions on behalf of the individual.

This principle requires the guardian or other surrogate to learn as much as possible about the lifestyle, behaviors, preferences, and decisions made by the person prior to incapacity. Taking these factors into careful consideration, the guardian makes decisions that would, as closely as possible, reflect what the person would have decided, if capable of making the decision. The person's autonomy, values, beliefs, and preferences usually are best protected when the person's own judgement can be substituted in place of the guardian's judgement (NGA Standard 7.III).

To do this properly, the guardian must become a detective, carefully unraveling the person's history by consulting anyone who may be able to provide information on the person's preferences and past history of decision making, including the person, the person's relatives, friends, caregivers, or religious leaders.

Best Interest

In some instances, the guardian may not be able to determine the person's current wishes or what he or she would have chosen to do on a particular issue. This may occur when the person can no longer communicate his or her wishes or when there is no history of decision making because the person has never had capacity (perhaps due to severe intellectual disability). In some cases, the

guardian may not be successful in locating anyone who has information about the person's previous history.

In these situations, the guardian should make decisions based on the best interests of the person. The principle of best interest is based not on the person's history or desires, but on what a "reasonable person" would do. Although the best interest principle is more objective and many factors are weighed in making the decision, it provides the least amount of involvement by the person in the decision-making process. Even when using the best interest standard, the guardian must select the least intrusive, least restrictive, and most normal, course of action (NGA Standard 7.IV).

NGA's position is that the guardian should use the principle of best interest only when person centered decision making, or substituted judgement cannot be used. This is when the guardian cannot determine what the person's own decision is or would have been, or when following the person's wishes would cause substantial harm (NGA Standard 7.IV).

When making a decision based on the best interest principle, the guardian should seek expert advice from other professionals or from a special ethics committee. Keep in mind that the determination of what is in the best interest of the individual does not include what the guardian personally thinks would be best for the individual.

Informed Consent

For any person's consent to be valid, it must meet certain legal requirements. To be considered legally adequate, the person giving consent must:

- Be of legal age
- Not have been adjudicated incompetent (as in under a guardianship) or otherwise had the right to consent limited (as in a divorce decree limiting the non-custodial spouse from consenting to services or treatment for minor child)
- Know and understand the nature, purpose, consequences, risks, benefits, and alternatives to the service or treatment for which consent is being given
- Give the consent voluntarily, without coercion or undue influence from others

If these requirements are met, the individual may give consent. If any of these requirements is not met, an informed consent cannot be made (NGA Standard 6).

A guardian may be called upon to provide informed consent on behalf of the person under guardianship who may be disqualified by one of the above reasons from providing informed consent on his or her own behalf. Guardians providing informed consent on behalf of another are entitled to the same information the person would need to make the consent if he or she were not under guardianship (NGA Standard 6.IV).

Decision-Making Process

The responsibility of making decisions for another individual on a daily basis both characterizes and sets apart the role of guardian from that of any other service provider. Unlike other professionals, such as physicians, educators, or architects who provide a service at the direction of the client, the guardian provides direction for the client. Just as a professional guardian's role is different than other professionals, a family guardian's role is different than a family member's role. Family members who are appointed as guardian for a loved one need to keep in mind that the decision process is legally different for a court-appointed guardian than for a parent, spouse, sibling, child or other family member who is helping a loved one.

When making any decision on behalf of the person under guardianship, the guardian should take into consideration the following factors:

- The person should be involved in the decision-making process to the greatest extent possible. The guardian should support the person to make the decision on their own (NGA Standard 9).
- Do everything possible to help the person express his or her goals, needs, and preferences, if the person has difficulty expressing what they want.
- Determine the person's current wishes and desires, if they are ascertainable. Many individuals, regardless of their legal capacity, can express an opinion if approached in a manner they can understand. The guardian should consider the effect the information will have on the person, the person's potential reaction to the information, and what can be done to help the person deal with the information (Standard 9).
- Consider the wishes and desires the person expressed prior to incapacity, if they can be determined. Advance directives, such as a power of attorney or a living will, may provide insight into how the person would have responded to similar situations. The guardian should also ask about clearly communicated oral statements that the person may have made, especially those made to individuals in positions of trust, such as physicians, attorneys, counselors, and faith-based leaders.
- Consider information about how the person would have made the decision. This would include the person's religious, moral, and ethical beliefs. The guardian should also consider any past situations in which the person has made decisions, particularly in which the person has refused medical care.
- Diligently seek the opinions of those familiar with the person, including spouse, parents, children, and next of kin. In evaluating these opinions, it is important to consider any possible distortion in any family member's perception of the situation. Conflicts of interest or lack of involvement with the person may have significant impact on the recommendations that others make.
- Consider the financial consequences to those who express an opinion. Evaluate both the financial advantages and disadvantages to the person's family, physicians, attorneys, and friends. Also consider the extent to which the consequences of the decision may influence the opinions given.
- Diligently seek the opinions of others who know the person, such as close friends, neighbors, health care workers, etc.
- Consider the opinion of the person's attorney and guardian ad litem, if available.
- Obtain independent opinions from experts and authorities, when necessary.

- Seek opinions from medical or long-term care facility ethics committees or review boards, if available. This may not be possible because not all facilities have an ethics committee or a review board. If they do, they may have a policy against providing an opinion when a conflict of interest exists. In these situations, the guardian should consider presenting the situation to an independent ethics committee, peer review committee, or some other independent review process.
- Document and carefully review any opinions or additional information provided.
- Evaluate the advantages and disadvantages of the decision.
- Modify the person's plan of care in light of the decision that is made. The decision may require that new or additional services be provided.

Only when these steps have been conducted and the goals and preferences cannot be ascertained may the guardian make a decision in the person's best interest (NGA Standard 7.IV).

Least Restrictive Alternative

When supporting the decision of the person or acting as a surrogate decision maker, the guardian must seek the least restrictive alternative or option available that meets the person's needs (NGA Ethical Principal 3). This frequently requires a balance between protecting the person from harm and enhancing the person's self-determination (NGA Standard 8).

In determining the least restrictive alternative for a person, the guardian must:

- Become familiar with available community options for residential placement, medical services, vocational training, and educational services.
- Know the person's goals and preferences, if possible. What the person wants may not be the least restrictive alternative in the guardian's eyes. However, if what the person wants meets the balance between safety and independence and contributes to the person's well-being, then this would be the least restrictive alternative.
- Consider the needs of the person as determined by professionals. This may include assessment of the person's functional ability and health status.
- Choose the option that places the fewest restrictions on the person's rights, freedom, and ability to connect with the environment. (NGA. 22)

Promoting Growth and Self-Reliance

Guardians should be alert to indications that the person's capabilities have changed. When this occurs, the guardian should assist the person in obtaining complete or partial restoration of any legal rights that were removed. The person has a right to challenge the need for guardianship and may retain an attorney to assist in this endeavor. The guardian has an obligation to assist and guide the person in seeking restoration of rights. In no way should the guardian hinder the person's efforts. Full or partial restoration of rights is a great indicator of the guardian's success in fostering the person's independence and self-reliance (NGA Standard 9).

See Part Ten: Guardianship Modification/ Modification or Termination of Guardianship

Even without a formal modification, guardians can transfer decision making in specific areas to the person. For example, the area of general supervision includes making decisions related to residence, habilitation, employment, and education. The individual may be able to independently obtain and maintain his or her own employment. The guardian could let the individual know that they can assume responsibility in that specific area. As the individual shows more ability to make informed decisions, more opportunities are provided for the individual to make those decisions.

Dignity of Risk

Dignity of risk is the idea that self-determination and the right to take reasonable risks are essential for dignity, personal growth and self-esteem. Finding the right balance between “dignity of risk” and safety is an ongoing process within each guardianship. As guardians responsible for people’s well-being, this can be a tricky path to navigate. Below is a quote that illustrates the tension.

Some risks, some suffering, is integral to our common humanity. It is impossible to defend against it without destroying the fabric of human life. But without vigilant and vigorous protection, people with disabilities are far too often neglected and abused. This is the dilemma we face: how do we collectively protect people without patronizing them or destroying their opportunities? John O'Brien

Guardians must always be mindful of the need to allow for individuals to experience “dignity of risk.” This right should not be impeded by overly cautious guardians, who are understandably concerned about their responsibilities to assure for safety. It can be difficult at times, sometimes almost counter-intuitive, to support an individual in making decisions to engage in actions which may involve some risk. The development of a strong relationship with the individual along with the involvement of the team should work toward supporting the person to achieve their goals, hopes, wishes, even if uncomfortable with the guardian or team. The team may work toward putting in place safeguards as appropriate, allowing the person to take a risk, and have necessary supports in place should they need them.

Balancing Advocacy and Diplomacy as a Guardian

Advocacy is the heart, the core, of guardianship. Guardians advocate for client rights, high quality services, excellent medical care, respectful treatment, an enviable life and a good death. Guardians feel legally, morally and ethically responsible for obtaining these outcomes, but the world does not always cooperate with these goals. Services can be challenging to obtain or are lacking in quality, staff can be poorly trained or non-existent, bureaucratic barriers stand in the way, doctors may disregard the person’s quality of life and the role of the guardian, families can be disconnected or detrimental, and clients may continuously make choices which put themselves and others at risk. Guardians often find themselves having to advocate, negotiate, wheedle, cajole and even demand the outcomes they are seeking. When these efforts are successful, being a guardian can be one of the most interesting and rewarding jobs in the world, but when they are not successful, being a guardian can be the most frustrating, if not infuriating job imaginable.

Due to this inherent tension, successful guardianship requires an appreciation of both art and science. Guardians must be able to appreciate the beauty and delicacy of life while respecting the laws of physics when trying to achieve movement towards a goal. If a guardian either applies too little force too gently or slams against an obstacle with too much force or speed, their likelihood of success is greatly diminished. The key is finding just the right amount and type of force.

The capacity to deal with intense frustration exists on a continuum which can vary between or even within individual guardians. Intense frustration may cause some guardians to become too passive and too accepting of less than desirable outcomes. They may give up too easily. At the other end of the continuum, guardians may “go out of bounds” in the other direction, become loud, aggressive, demanding or even threatening in an attempt to fulfill their obligations as advocate. Struggling service providers can be oversensitive and interpret many statements or actions as hostile, even when they are not intended that way. Guardians may not recognize the abrasive, offensive or frightening impact their interactional style may have on the very people they are trying to influence and may be surprised by negative feedback from these encounters.

Usually, guardians have a legitimate reason to be frustrated and upset when they when they go “out of bounds,” but this does not excuse aggressive, hostile behavior. There are several possible outcomes of these problematic interactions, even if the guardian’s assessment of an issue is correct. Complaints against the guardian may result in mediation, an investigation, removal of the client from the case load, or referral to the SOV Employee Assistance Program or the Department of Human Resources.

One technique (slightly tongue in cheek) that has been used successfully is called “Stop, Drop, and Roll Back to the Office.” When a guardian senses that they are heating up emotionally “catching fire,” they should politely extricate themselves from the situation (Stop), use some self-calming techniques (Drop), and contact their supervisor or the director for assistance (Roll Back to the Office).

All guardians struggle at times to find the happy medium of artful, assertive, strategic negotiation, otherwise known as diplomacy. Diplomacy lies somewhere between surrender and aggression and varies depending on the circumstances and the entity on the other end of the interaction. Guardians dealing with the extreme frustration inherent in this position, may also find themselves struggling with private emotional reactions to the job, such as stress, anxiety, and depression. Guardians may need to turn to their supervisors frequently for support, when inevitably (and understandably) they are struggling emotionally or when they stray “out of bounds.”

Part Five: Adult Guardianship in Vermont

There are four main kinds of guardianship for adults in Vermont:

- [Private Guardianship for Mentally Disabled Adults and Adults with Developmental Disabilities \(14 V.S.A Chapter 111\)](#)

- [Public Guardianship for Adults with Developmental Disabilities \(18 V.S.A Chapter 215\)](#)
- [Public Guardianship for Mentally Disabled Adults age 60 or over \(14 V.S.A Chapter 111\)](#)
- [Voluntary Guardianship 14 VSA 111 §2671](#) – OPG does not provide voluntary guardianship services.

NOTE: There is no provision for Public Guardianship in Vermont for people aged 18-59, except for people with a developmental disability.

Private Guardian

A private guardian is usually an adult family member or friend of a person who has lost or has not developed decision-making capacity. The guardian does not necessarily live in the same household as the person. A private guardian is appointed by a Probate Court. Private guardians may reside outside of the state of Vermont with court approval. OPG is available to provide information to the public about guardianship and its alternatives, and to assist private guardians in understanding and carrying out their duties. Private guardianships can be either involuntary or voluntary. Additional information related to private guardianship can be found in [VSA Title 14 Chapter 111, The Guardian's Handbook](#) developed by the Office of Public Guardian, and on the DAIL website [Private Guardianship for Adults with a Mental Disability | Developmental Disabilities Services Division \(vermont.gov\)](#)

Private Professional Lawyers/Conservators

The Probate Court occasionally will appoint a private lawyer or conservator to assume the role of guardian when an individual (generally an Older Vermonter) has the financial means to pay for this service. This person is usually not a family member. The court will determine what areas of guardianship are warranted in each case.

Public Guardian

A Public Guardian is a Vermont state employee who works for OPG/DAIL. Public guardians act under the court ordered authority of the Commissioner of DAIL. The Commissioner will only be appointed if the person is found to need a guardian and has no suitable friends or family willing to serve in this role. Public guardianship is statutorily limited to adults with developmental disabilities (Title 18, Family Court) and older individuals aged 60 and above with significant cognitive impairments (Title 14, Probate Court).

This field guide will primarily focus on guardianship assigned to OPG.

Eligibility for Public Guardianship

Eligibility for Adults with Developmental Disabilities Title 18 V.S.A. §9301

A public guardian may be appointed by the Family Court for an adult with a developmental disability if the following eligibility requirements are met. The person must:

- Be 18 years of age or older;
- Have a diagnosis of developmental disability; and
- Need supervision and protection for the person's own welfare or the public welfare.

According to 18 V.S.A. §9302, "a person with developmental disabilities" who is eligible for public guardianship is defined as:

- (1) a person with a severe, chronic disability that must arise before the person reaches the age of 18, and results in:
 - (A) intellectual disability, autism, or pervasive developmental disorder; and
 - (B) deficits in adaptive behavior at least two standard deviations below the mean for a normative comparative comparison group; or
- (2) a person with a developmental disability who was receiving services on July 1, 1996.
- (3) is unable to personally exercise some or all of the powers and responsibilities described in section 9310 of this title; and
- (4) is not receiving the active assistance of a responsible adult to carry out the powers and responsibilities described in section of this title.

Clinical eligibility for Developmental Services, as described above in (1), is a requirement for an individual to receive public guardianship under Title 18. Clinical eligibility is determined by an assessment conducted by a Designated Agency (DA).

The court decides if a person is receiving the active assistance of a responsible adult described in (4).

OPG may be appointed as guardian of an individual with a developmental disability by the Probate Court under certain conditions. These orders must be transferred to Family Court by DAIL's Assistant Attorney General. **See Part Two: Office of Public Guardian Statutes, Overview and Roles of Specific Positions/ Position Specific Roles and Responsibilities Within OPG/ OPG Legal Counsel**

Eligibility for Mentally Disabled Adults Age 60 or Over Title 14 V.S.A. §3061

A Public Guardian may be appointed by the Probate Court for an adult with a significant cognitive impairment **60 years of age or older** if it finds that there is no suitable and willing family member or friend to serve as guardian and the person needs a guardian. Every effort to locate a suitable private guardian must be made before a Public Guardian is appointed.

According to 14 V.S.A §3061, "a person in need of guardianship" is defined as a person who:

- (1) is at least 18 years of age; and
 - (A) is unable to manage, without the supervision of a guardian, some or all aspects of his or her personal or financial affairs as a result of:
 - (B) significantly subaverage intellectual functioning which exists concurrently with deficits in adaptive behavior; or

- (2) a physical or mental condition that results in significantly impaired cognitive functioning which grossly impairs judgment, behavior, or the capacity to recognize reality.
- (3) "Unable to manage his or her personal care" means the inability, as evidenced by recent behavior, to meet one's needs for medical care, nutrition, clothing, shelter, hygiene, or safety so that physical injury, illness, or disease has occurred or is likely to occur in the near future.
- (4) "Unable to manage his or her financial affairs" means gross mismanagement, as evidenced by recent behavior, of one's income and resources which has led or is likely in the near future to lead to financial vulnerability.

Eccentricity or poor judgment alone are **NOT** criteria for guardianship, nor is guardianship appropriate if less restrictive solutions to a person's well-being can be implemented.

Part Six: Legal Process and Powers of Guardianship

Any interested person with knowledge of the facts can file a petition for an individual who meets the statutory requirements. Examples of interested persons include DA/SSA service coordinators, Area on Aging case managers, hospitals, physicians, APS, DCF, family members and private attorneys. A petition for public guardianship must be filed in the county where the person who needs a guardian is living and in the designated court (Probate or Family).

The Office of Public Guardian does not file initial petitions for Public Guardianship under Title 14 or Title 18 and is not considered a party to the guardianship proceedings. This standard does not prohibit the OPG staff from assisting families and other interested people about how to petition for guardianship and alternatives to guardianship. The AAG does file guardianship petitions on behalf of OPG pursuant to [18 V.S.A. §9303](#) after being appointed temporary guardian, to modify orders and to terminate orders. The AAG, because they represent other programs in DAIL, occasionally files petitions for guardianship in its capacity as counsel for Adult Protective Services.

Title 18: Family Court Guardianship Process

Process – Petition, Lawyer, Evaluation, etc.

Public guardianship cases for adults with developmental disabilities are heard in Family Court. The person petitioning for guardianship completes a [Petition for Public Guardianship for a person with Developmental Disabilities](#), which is submitted to one of the fourteen State's Attorney's offices located throughout Vermont. This process can often go awry. This section describes what is supposed to happen.

The [State's Attorney](#) (or Deputy State's Attorney) files the petition with the Family Court in the county where the person resides. The court must notify the person for whom a guardianship petition has been filed in writing that a petition has been submitted. Usually, the Family Court appoints an attorney from the [Disability Law Project | Vermont Legal Aid \(vtlegalaid.org\)](#) to

represent the individual. In some cases, private attorneys are appointed to represent the individual. The court may also appoint a guardian ad litem for a proposed person who cannot communicate with a lawyer or does not understand the right to be represented by a lawyer. A guardian ad litem's role is to make sure the proposed person's legal interests are adequately protected during the court process and does not extend beyond the scope of the proceedings.

A copy of the petition is emailed to the Commissioner/OPG along with an order directing the Department of Disabilities, Aging and Independent Living to obtain a comprehensive evaluation to determine whether the person needs a Public Guardian. Guardianship evaluations are to be completed by qualified developmental disabilities professionals (QDDP). The evaluation shall be submitted to the court within 40 days of the court's service of the petition to the commissioner unless the time period is extended by the court for cause. The report shall contain recommendations and supporting data regarding the ability of the respondent to function in society without guardianship and shall specify those activities for which the respondent needs supervision and protection. The report shall also include information regarding the availability of one or more responsible adults to assist the individual in decision making. Based on the information obtained in the evaluation, the evaluator will make recommendations to the court about the need for and extent of guardianship based upon criteria set out in the law. The court shall not be bound by the evidence contained in the comprehensive evaluation but shall make its determination upon the entire record.

The hearing is held between 20 and 30 days from the date the completed evaluation is filed with the court. The person for whom a petition has been filed, the petitioner, and all interested parties named in the petition receive notice of the hearing. In general, interested parties may testify, and the proposed person and the petitioner have the right to call additional witnesses as well. At the end of the hearing, the judge decides, based upon all the evidence presented at the hearing, whether the proposed person meets the legal criteria for public guardianship. If the Court determines that public guardianship is necessary, the Judge will appoint the Commissioner of DAIL as guardian. They will designate the specific powers and duties for the Office of Public Guardian to assume, while promoting the independence of and protecting the best interests of the person under guardianship. An appointment of the Commissioner to provide guardianship shall not constitute a judicial finding that the person is legally incompetent for all purposes but shall only restrict the person's rights with respect to those powers expressly granted to the Commissioner.

Although OPG is not officially a party to these proceedings, there are times when the Intake and Diversion Specialist or Regional Supervisors do preliminary work to look for alternatives to public guardianship before a petition is filed. **See Part Two: Office of Public Guardian Statutes, Overview and Roles of Specific Positions/ Position Specific Roles and Responsibilities Within OPG/ Intake and Diversion Specialist.**

The Four Powers of Guardianship in Title 18 – VSA 18 §9310

Vermont law authorizes Public Guardianship for people with developmental disabilities in the following areas:

- (1) General Supervision - This includes choosing or changing the residence, care, habilitation, education, and employment of the respondent and the power to approve or withhold approval of the sale or encumbrance of real property of the respondent
- (2) Contracts - The power to approve or withhold approval of any contract, by or in the name of the respondent
- (3) Legal - The power to obtain legal advice and to commence or defend against judicial actions in the name of the respondent
- (4) Medical/Dental - The power to seek, obtain, and give consent to initiation and continuation of medical and dental treatment that best promotes the health, comfort, and well-being of the individual or to withhold consent for the initiation or continuation of treatment which does not promote the health and well-being of the individual. In exercising this power, the guardian shall be guided by the wishes and preferences of the individual. Any decision to withhold or abate medical treatment for an irreversible or terminal condition shall be reviewed by the Departments' Ethics Committee. Nothing in this power shall be interpreted as giving the guardian authority to consent to sterilization, lobotomy, involuntary administration of psychotropic medications, surgery of the brain for purpose of modifying behavior, or electroconvulsive therapy for the individual.

No Financial Power

Title 18 does not grant financial guardianship in Family Court orders; therefore, a public guardian is **not** the financial guardian for a person when the guardianship order comes from the Family Court. 18 V.S.A. §9313 clarifies “*when providing guardianship services, the Commissioner (Guardian) shall assist any person who is under guardianship to obtain those services to which the person is lawfully entitled and which the person needs in order to maximize opportunities for social and **financial** independence. These services include **counseling and assistance in the use of and handling of money**.* This language grants the Guardian the authority to protect assets and benefits and offer input into decisions related to the personal finances of individuals under Title 18 guardianship.

Title 14: Probate Court Guardianship Process

Process – Petition, Lawyer, Evaluation, etc.

Public guardianship for adults over the age of 60 who meet the statutory definition of a person in need of guardianship are heard in the Probate court. Guardianship petitions are filed in the Probate Court of the county where the person who needs a guardian lives. In the petition, the person who needs a guardian is referred to as “the respondent.” The petition includes the following forms, all of which must be submitted even if the requested information is unknown: [Petition to Appoint a Guardian for an Adult \(Involuntary\) Probate Court](#). The proposed guardian must also be identified on the petition and must consent. For OPG, the Intake and Diversion supervisor usually consents. If the Intake and Diversion Specialist is unavailable, a regional supervisor or director can consent. Alternatives to guardianship that were considered and an explanation as to why each alternative is unavailable or unsuitable must also be included on the petition.

Interested Persons If the respondent has a spouse or child(ren) those people are considered interested persons, even if they have had no contact with the respondent and even if they have specifically stated that they want no involvement in the process.

Statement of Respondent's Assets and Income This includes the nature, description, and approximate value of respondent's income, property and resources, including public benefits and pension information.

Consent to Background Check (if proposed guardian is a private individual).

A filing fee (currently \$150) is required by the court to file for private guardianships. A hardship waiver application can be submitted for the filing fee to be waived if necessary.

Application to Waive Filing Fees and Service Costs

The court must notify the person for whom a guardianship petition has been filed in writing that a petition has been submitted. The court must also see that the person is represented by a lawyer and must appoint one if necessary. For indigent respondents, the court shall maintain a list of pro bono counsel from the private bar to be used before appointing nonprofit legal services organizations to serve as counsel. If the respondent has money, they will pay for an attorney. The court may appoint a guardian ad litem for a proposed person who cannot communicate with a lawyer or does not understand the right to be represented by a lawyer. A guardian ad litem's role is to make sure the proposed person's legal interests are adequately protected during the court process and does not extend beyond the scope of the proceedings.

The court then orders an evaluation of the individual by someone who has specific training and has demonstrated competence to evaluate a person in need of guardianship. If the individual has money, they will be charged for the evaluation fee. If the individual is unable to afford some or all of the cost of the evaluation, the court shall order that DAILE provide the evaluation through qualified evaluators. A report shall be completed within 30 days of the filing of the petition unless the time period is extended for cause. The evaluation shall describe the nature and degree of the respondent's disability, if any, and the level of the respondent's intellectual, developmental, and social functioning. The evaluator will include recommendations with supporting data related to aspects of the person's personal care and financial affairs that he or she can manage with and without supervision and support. The evaluator will also make recommendations to the court as to the powers and duties that should be given to the guardian based upon the criteria set out in the law. The court shall not be bound by the evidence contained in the evaluation but shall make its determination upon the entire record.

The hearing is generally held between 15 and 30 days from the date the evaluation is filed with the court. The person for whom a petition has been filed, the petitioner, and all interested parties named in the petition receive notice of the hearing. In general, interested parties may testify, and the proposed person and the petitioner have the right to call additional witnesses as well. At the end of the hearing, the judge decides, based on clear and convincing evidence presented at the hearing, whether or not the proposed person meets the legal criteria for needing a guardian and will enter judgement specifying the powers of the guardian.

Probate Beginnings: “DD in Probate”

The Probate Court also has concurrent jurisdiction to appoint the Commissioner to serve as emergency/temporary guardian for an individual with a developmental disability in very specific situations if the person meets the criteria outlined in [14 V.S.A. §3063](#). Guardians should consult with their supervisor and/or Intake and Diversion Specialist to determine next steps. Depending on the situation, even if the Probate court order is temporary, it may be advisable to make some financial decisions while the order is in place. OPG should engage the AAG to file a petition to transfer the order from probate to family court within 90 days of the appointment.

Emergency Guardianships

If a guardian is needed more immediately, there are two emergency options; one is a request for an appointment without notice to anyone and the other is a request for an appointment with notice to the respondent and any interested persons. [14 V.S.A. §3081](#) provides more information. In addition to submitting the documents listed above, the petitioner must also include a [Motion for Emergency Temporary Guardian](#) and an [Affidavit in Support of Emergency Guardianship](#).

Emergency Appointment with Notice

The petitioner must show that serious and irreparable harm to the respondent’s physical health or financial interests will likely result during the pendency of the petition. After receiving a request for an emergency appointment with notice, the court will set a hearing “at the earliest possible date.” If the court grants the motion, it will issue an emergency temporary guardianship. An emergency, temporary order expires in 90 days or when a decision is made on the guardianship petition whichever happens first. The emergency order can be extended if needed.

Emergency Appointment without Notice

The petitioner must show that immediate, serious and irreparable harm will result to the respondent before the hearing on the appointment of an emergency temporary guardian can be held. If the court finds that immediate harm will result if an appointment is not made, it will issue an ex-parte, emergency temporary order (that is, an order that is issued without notice to respondent or any interested persons). The ex-parte, emergency temporary order is only valid for 14 days and the court should schedule a hearing within that 14 period.

If after the hearing, the court finds that guardianship is still necessary, it will issue an emergency, temporary guardianship order which remains in place for 90 days or until a decision on the guardianship petition is made.

Guardians should make sure they know what kind of appointment order they have and when it expires.

According to Vermont law, guardianship services for adults must encourage self-determination and independence, and the extent of a guardian’s decision-making ability must be based upon the abilities and needs of the person. The court may create a total or limited guardianship. Thus,

some guardianship orders include the guardian assuming responsibility for all personal and financial matters of the person, and in other orders guardians only have authority over particular aspects of the person's life, such as medical decisions or finances. Based on the person's needs, the Probate Court grants the guardian one or more of six guardianship powers:

The Six Powers of Guardianship in Title 14 – VSA 14 §3069

- (1) General Supervision - To exercise general supervision over the person under guardianship. This includes care, habilitation, education, and employment and choosing or changing the residence subject to the requirements of sections 2691, 3073, and 3074 of this title.
- (2) Medical/Dental - To give or withhold consent to medical or dental treatment, subject to the provisions of Title 14 VSA §3075, and any constitutional rights of the person under guardianship to refuse treatment, provided that the court in its discretion may place limitations on the guardian's powers under this subdivision if appropriate under the circumstances, including requiring prior court approval for specific surgeries, procedures or treatments.
- (3) Financial - To exercise financial supervision over the income and resources of the person under guardianship. This includes the power to seek or apply for, receive, invest, and expend all wages, compensation, insurance benefits, public benefits, and pensions for the benefit of the person under guardianship, to liquidate personal property for the benefit of the person under guardianship, to settle accounts, demands, claims and actions by or against the person under guardianship, and to take any other action reasonable necessary to secure, preserve, protect and defend the financial interests of the person under guardianship.
- (4) Contracts - To approve or withhold approval of any contract, except for necessities, which the person under guardianship wishes to make.
- (5) Sale or Encumbrance of Property - To approve or withhold approval of the sale or encumbrance of real property of the person under guardianship subject to the provisions of Title 14 VSA §2881, et seq.;
- (6) Legal - To obtain legal advice and to commence or defend against court actions in the name of the person under guardianship.

Final Guardianship Orders Titles 18 and Title 14 - Read Them Carefully

For each individual, the rights that have been removed and delegated to the guardian are stated in an order or judgment signed by either the Family or Probate court judge. The assigned court will generally provide the final guardianship order for an individual to the Administrative Services Coordinator. The order will then be forwarded to the assigned guardian and their supervisor. The guardian and their supervisor are responsible for reading the order carefully to determine what powers have been assigned to OPG by the court. For example, an order may only assign medical guardianship to OPG. The individual may retain their rights and decision-making capacity in the other areas, or a family member may occasionally be assigned additional guardianship powers. Some orders have specific instructions outlined in the order that must be followed. Other orders are time limited/sunset after a certain time period. The guardian must

become knowledgeable of the language in the order and the powers that have been delegated to OPG.

Part Seven: OPG Authority, Duties & Responsibilities, In-Depth Topics Within Each Power

Authority and Duties of Commissioner as Guardian

For each individual, the rights that have been removed and delegated to the Commissioner (guardian) are stated in the order signed by either the Family or Probate court judge. This legal document gives the Commissioner (guardian) the authority to act on behalf of the person and must be recognized by other professionals, banks, government agencies, and service providers. These entities may require copies of the order to verify areas of authority (i.e., residential and medical decision-making) given to the guardian. They may also require a copy of the letter from the Commissioner to each guardian stating that they have the authority to act on behalf of the Commissioner in all matters related to guardianship.

Vermont statutes [18 V.S.A. §9313](#) and [14 V.S.A. §3071](#) outline the duties of the Commissioner (guardian) when providing guardianship services. The commissioner delegates their duties and powers as a guardian to the assigned Public Guardian.

18 V.S.A. § 9313. Duties of Commissioner When Providing Guardianship Services

- (1) When providing guardianship services to a person with developmental disabilities, the Commissioner (guardian) shall maintain close contact with the person with developmental disabilities, no matter where the person is living in this state and shall permit and encourage maximum self-reliance on the part of the person with developmental disabilities under his or her protection. The Commissioner (guardian) shall permit and encourage involvement by the person with developmental disabilities, and family members, and other individuals of the person's choice in planning and decision-making.
- (2) In addition to the supervisory powers vested in the Commissioner (guardian) by the court pursuant to section 9310 of this title, the Commissioner (guardian) shall assist any person who is under guardianship to obtain those services to which the person is lawfully entitled and which the person needs in order to maximize opportunities for social and financial independence. Those services include, but are not limited to:
 - (A) Education services for a person with developmental disabilities who is of school age;
 - (B) Residential services for any person with developmental disabilities who lacks adequate or appropriate housing or residential supervision;
 - (C) Medical and dental services as needed;
 - (D) Therapeutic and habilitation services, adult education, vocational rehabilitation or other appropriate programs or services for any person with developmental disabilities who is in need of such training or services;

- (E) Counseling and social services;
- (F) Counseling and assistance in the use of and of money.

14 V.S.A. § 3071 Duties of the Commissioner When Providing Guardianship Services

- (1) The guardian shall maintain close contact with the person under guardianship and encourage maximum self-reliance on the part of the person under guardianship.
- (2) In addition to the powers vested in the guardian by the court pursuant to section 3069 of Title 14, the court may order the guardian to assure that the person under guardianship receives those benefits and services to which he or she is lawfully entitled and needs to maximize his or her opportunity for social and financial independence. Those benefits and services include, but are not limited to:
 - (A) Education services for a person under guardianship who is of school age;
 - (B) Residential services for a person under guardianship who lacks adequate housing;
 - (C) Nutrition services;
 - (D) Medical and dental services, including home health care;
 - (E) Therapeutic and habilitative services, adult education, vocational rehabilitation, or other appropriate services.
- (3) The guardian shall always serve the interests of the person under guardianship and shall bring any potential conflicts of interest to the attention of the court.

Guardian Responsibilities

Individual's New to Guardianship – Process, Assessment and Necessary Actions

Guardianship orders for individuals assigned to the Office of Public Guardian are generally submitted by the court via the OPG Judiciary mailbox after the completion of the guardianship hearing. Once received, the OPG Administrative Services Coordinator or Intake and Diversion Specialist (IDS) will forward the information to the Regional Supervisor in the geographic area where the person resides. The Regional Supervisor will assign a public guardian to the individual based on several factors such as the size of the guardian's current caseload, skill set, geographic considerations, etc. Once a Guardian has been designated the following steps should be followed:

- Read the court order to determine the power(s) of guardianship that have been assigned for the individual. If partial guardianship has been assigned, some of the following steps may not be relevant.
- Check the electronic record system for any notes or attachments to determine if any information can be gleaned from those entries. Speak with the IDS for any additional background information.
- Contact the individual within 24 hours to introduce themselves and explain their role as guardian. Contact ideally should be in person; however, phone or video contact is also acceptable. Explain the powers of guardianship as ordered by the court. A [“Welcome to Guardianship” letter](#) should be provided to new individuals under guardianship.

- In some circumstances, the guardian should wait until they have a written copy of the guardianship order to share with the individual. If there is a delay caused by the court, it may be necessary to reach out to the court and explain the need for the order to be issued.
- Contact the service agency, caregiver, medical professionals, etc. involved in the care and treatment of the individual (if medical guardianship has been ordered) and/or involved family members as applicable and provide a copy of the guardianship order. Carefully discuss the option of transferring guardianship to any family/friends that may be appropriate.
- Request copies of records related to the individual's health, benefits, resources and services within 30 days. Examples of records to be obtained include service agency evaluations, Individual Support Agreement/Plan of Care, IEP, medical records, financial status and resources, identifying documents such as social security card, Medicaid/Medicare cards and birth certificate. Some records can be requested electronically while others need to be original documents.
- Update existing electronic file created by the IDS or Administrative Services Coordinator and scan all pertinent documentation (including guardianship order) into the file.
- Assess all benefits that the individual may be entitled to. Determine if a Representative Payee is needed or already in place.
- Communicate/meet regularly with the individual under guardianship and their support team during the first months of guardianship to develop a clear understanding of who the person is, and their wishes related to all aspects of their life.
- Keep supervisor updated on all efforts to obtain necessary documentation as well as contact with the person and their team to determine necessary actions. Discuss all impediments to this process.
- Maintain monthly case notes in electronic record system to document the person's situation and well-being, and the guardian's actions taken on behalf of the individual.
- Compile necessary information and complete a 90 Day assessment for individuals with DD. Submit to supervisor for review.

Tips for Communicating with the Individual

The following section is an insertion from *"The Fundamentals of Guardianship: What Every Guardian Should Know"* by the National Guardianship Association Handbook.

Effective communication is an important tool for all guardians. When communicating with clients, the guardian should:

- Talk with, not at the person
- Listen carefully to what they are saying and/or trying to communicate
- Include them in the conversation
- Never discuss them as though they are not there
- Encourage them to answer questions directed to them
- Consult with them, even on "minor" issues
- Include them in any meetings affecting their future

- Avoid nicknames and terms (“honey,” “gramps,” etc.) which have a childish or disrespectful connotation
- Introduce them using their full name and using a title such as Mr., Mrs., or Miss to show respect
- Address them by any preferred name or title

Guardians should model the behavior they expect service providers to follow when communicating with or otherwise relating to the person. The way the guardian interacts with the person, the way the guardian speaks about or to the person, and the way the guardian treats the person can serve as behavioral models for others.

In-Depth Topics within Each Power

Power of General Supervision

The power of general supervision is ordered when the court finds that an individual is unable to meet their needs for housing, nutrition, clothing, hygiene, or safety. The guardian may be given the authority to make decisions about the individual’s residence, care, therapy, skills training, supervision, education, and employment. As with all other matters, this power must be exercised in a manner that assists the individual to live the life they wish to be leading.

The guardian should participate in regular care planning or treatment planning meetings. Any program (service agency or facility) serving an individual is expected to inform the guardian promptly of any changes in the individual’s condition and obtain the guardian’s permission before starting or changing treatment or changing a residential placement. **See Part Eight: Guardian’s Role with Other Entities/ Guardian Consent and Notification Requirements**

General supervision includes the authority to choose or change residence. The guardian should assess the needs and wishes of the individual regarding the type and location of his or her residence and should make every attempt to see that the individual has a chance to visit proposed homes. The guardian should also visit the proposed home and consider how the home will meet the individual’s needs. A guardian should determine that the individual will be living in a safe home, living with safe people who treat them with respect. The guardian should monitor that the individual has appropriate clothing, healthy food, privacy and needed equipment and accommodations. The guardian should make sure that the individual has access to a phone, can receive mail, and sees family and friends as desired and make sure that personal preferences and special occasions, such as birthdays and anniversaries or holidays that are important to the person are remembered and observed.

Authority to Choose or Change Residence: Title 14-Specific to Older Vermonters

Special consideration must be given to any proposed change of residence to a more restrictive setting than the current living arrangement. The continuum goes from a person’s own home to shared living, to staffed living, group home or assisted living and finally to residential facilities such as a nursing home or residential care home. Other options should be explored. Unless it is a dire emergency, the guardian must notify interested parties and obtain court approval *before*

moving the individual from a private home to a group setting, such as a residential care home, assisted living facility, or nursing home. After an emergency move, the guardian must notify interested parties of the move and ask the court for approval. Court approval is not required when an individual is moved to another home that is the same level of restriction (example: nursing home to nursing home, AFC home to AFC home) but the guardian must notify the court of the new address.

When an Older Vermonter comes into guardianship, the assigned guardian should follow the steps below as they relate to the guardian's authority to choose or change residence:

- Determine where the person is living and if that setting remains safe/appropriate.
- If the person comes into guardianship as a patient in the hospital and will be moving to a more restrictive living situation (i.e., Nursing home) request court permission to move them to that more restrictive setting. Complete and submit to the Probate Court a [Motion for Permission to Change/Continue Residential Placement](#).
- If the person comes into guardianship in an unsafe living situation, put whatever safeguards you can in place and begin working on a plan to either move the person to a safer situation or to improve the safety of the current residence. Contact [Adult Protective Services](#) and law enforcement if necessary.
- If the person comes into guardianship already having left their previous living situation, check to see what work needs to be done to finalize that move. Additional considerations are:
 - Did they own or rent their previous residence?
 - Do they still have personal belongings in their previous residence?
 - Is there anything that the person will need/want from their previous residence?
Try to get as much input from the person as possible regarding their possessions.
 - Do they own a car? If so, where is it?
 - Do they rent a storage unit?
- If the person owns their own home and will not be returning there, you may need to sell the home. **See Part Seven: OPG Authority, Duties & Responsibilities, In-Depth Topics Within Each Power/ In-Depth Topics within Each Power/ Power of the Sale or Encumbrance of Property**
- If the property is not in Vermont, the guardian cannot get a license to sell from the Vermont Probate Court. Determining if a license is required in the state where the property is located will depend on the laws in that state. Request help from legal counsel with this question.

How to Handle Older Vermonters' Mail

- If the person had been living independently but has since moved, the assigned guardian should complete a USPS Change-of-Address form and have the person's mail forwarded to the guardian's office.
- If the person will be remaining at the address where they receive their mail, the guardian will need to collect/view it regularly so bills, and important correspondence can be addressed.
- Collect any mail that has accumulated at the old address if applicable.

- Look for evidence of any pre-paid burial contracts, insurance for burial, family plots etc. Contact family members if no information is available.
- Unless there is a bill that needs to be paid immediately to protect the person's health and safety, try not to pay any bills until you have a full picture of the person's financial state.
- If the person has a safe deposit box, the guardian will need to open it and manage the contents. The guardian will often have no knowledge of these boxes until an invoice for the rent arrives. There are often no keys, and so the box must be drilled. This can be arranged through the bank. If the person does not have the money to cover the drilling fee, consider using the Guardianship Services Fund.

Authority to Choose or Change Residence: Title 18-Specific to Adults with DD and Title 14-Specific to Older Vermonters living in an Adult Family Care Home

Title 18: Court permission is not required for changes of residence for individuals under Title 18 guardianship. Guardians are required to follow OPG program guidelines for notification and documentation of changes of residence.

Each individual's living situation is unique, and a variety of factors can contribute to the need for a person under guardianship to move to a new residence. Guardians should keep their supervisor informed prior to moving a person to a different living situation. For individuals receiving Title 18 developmental services supports through a service agency and Older Vermonters living in an Adult Family Care home in a non-emergency situation, the guardian should follow the guidelines outlined below:

- Prior to a move, discuss the wishes and desires of the individual with their team related to the type of residence that would best meet their needs. Do they want to live in a city or country setting? Do they want to live with young children, pets, other consumers? Are medical, recreational, employment opportunities available? Is the home accessible if mobility needs are present? Any Act 248 restrictions in place that can impact placement?
- Maintain good communication with the individual, involved family members, agency service coordinators and residential personnel as a new home is developed.
- The individual and guardian should have the opportunity to meet with potential new providers prior to a move. Ideally, the individual should have a choice of more than one placement option.
- Visit the proposed home(s) to assess for health and safety concerns, whether it is the least restrictive environment and if it is an apparent fit with the providers.
- Prior to moving an individual into a newly identified home, the service agency must arrange for a [Housing Safety and Accessibility Inspection](#) completed by trained individuals. On occasion, agencies may reach out to guardians asking for acknowledgement and support of a variance when a home does not meet the standards. Even if the guardian does not object to the request, they should not formally approve of or support a request due to the inherent liability implied by the support. Instead, the guardian should write a letter acknowledging awareness that the agency is making the request ([See sample letter](#)).

- A decision regarding the requested variance will be made by the appropriate DAIL Quality Management staff through the DAIL Housing Portal within thirty (30) calendar days of DAIL's receipt of the variance request.
- If the guardian disagrees with a decision made by the DAIL Quality Management staff regarding housing safety and accessibility relative to the inspected residence, the guardian may request a Commissioner's Hearing. Appeals need to be filed within 30 days of the determination. The Commissioner's decision will be sent to the guardian.
- Agencies need to perform background checks on all household members over the age of 18, including college age children who return for prolonged visits. [DAIL Background Check Policy](#) Agencies sometimes ask guardians to support a variance. Even if the guardian does not object to the request, they should not formally approve of or support a request due to the inherent liability implied by the support. If the guardian does not agree and has general supervision decisional making power, they should speak with their supervisor about not approving the home.
- Request Peggy's Law information if a second consumer resides in the home. Provide consent for [Peggy's Law](#) information to be shared with the potential home provider and the guardian of the other consumer if applicable.
- Determine who will physically move the individual and their possessions. Not all agencies will assist in this process or pay for moving fees. Assess the individual's financial status to determine if they can contribute towards moving costs if necessary. If the person does not have the money to cover moving fees, consider using the [Guardianship Services Fund](#).
- Notify the Rep Payee prior to the move, if possible, with new demographic information and instructions related to room and board/rent payments.
- If the individual moves to a shared living home or alternative living situation out of state, the guardian should ensure that the following entities are notified: District Social Security Administration, Department of VT Health Access and the Developmental Disabilities Services Division. Follow the guidelines outlined in the [DDAS Maintaining Medicaid Eligibility When in Shared Living Out of State Guidelines](#).
- **Title 14:** Special consideration must be given to any proposed change of residence to a more restrictive setting than the current living arrangement. The continuum goes from a person's own home to shared living, to staffed living, group home or assisted living and finally to residential facilities such as a nursing home or residential care home. Other options should be explored. Unless it is a dire emergency, the guardian must notify interested parties and obtain court approval *before* moving the individual from a private home to a group setting, such as a residential care home, assisted living facility, or nursing home by completing and submitting a [Motion for Permission to Change/Continue Residential Placement](#). After an emergency move, the guardian must notify interested parties of the move and ask the court for approval. Court approval is not required when an individual is moved to another home that is the same level of restriction (example: nursing home to nursing home, AFC home to AFC home) but the guardian must notify the court of the new address.
- Update electronic record system with new demographic and contact information.

In some circumstances, an individual must be moved on an emergency basis. This can occur due to illness of an individual or their care giver, behavioral concerns that cannot be managed in the

current home, APS report of abuse, neglect or exploitation or discontinuation of a shared living provider contract by the agency. The service agency is required to notify the guardian immediately and obtain consent to move the individual to a temporary placement. The guardian is responsible for obtaining information related to the health and safety of the individual in the temporary placement and work with the service agency to determine residential options available to the individual moving forward following the guidelines outlined above.

If the guardian disagrees with an agency prompted move (either temporary or permanent) they should contact their supervisor/director and a representative of the service agency to discuss the situation in more detail. Guardians can refuse to provide consent for any placement they deem unsafe or contrary to the best interests of their client. The guardian and agency staff should meet ASAP to discuss the situation to outline mutual concerns and determine what steps could be taken to maintain the placement, augment the placement with additional supports or provide a temporary living situation while details are worked out to resolve this issue.

Transferring Clients to a Different Service Agency or Nursing Home

Guardians occasionally decide to transfer clients to a different service agency or nursing home due to a variety of reasons. Sometimes it is a mutual decision of the individual's team due to an acknowledgement of the inability to effectively provide the supports the individual requires; the individual wants to move out of the service agency's catchment area; or has requested a different provider. When this occurs, the team, individual and guardian can work collaboratively to seek alternative support/residential services and assign responsibility of tasks to ensure a smooth transition. These tasks include:

- Determine responsibility of roles for communication/documentation purposes with new/receiving agency or nursing home.
- Guardian will authorize release of records to new agency or nursing home and sign any documents related to access to services in the receiving agency.
- Participate in team meetings with both receiving and exiting agencies throughout the transition process (as needed). Determine necessary services and supports for the individual.
- For individuals living in a Shared Living/Adult Family Care model, determine if a new residential placement is necessary or if the current placement will continue with oversight from the receiving agency. Remaining with the current placement is contingent on criteria determined by the receiving agency and the consent of the guardian and current SLP/AFC provider. Of significant note, guardians can refuse a placement option but cannot compel an agency to contract with a provider if they are not willing to do so.
- Guardian will visit proposed placement/nursing home (if different from current placement).
- Guardian will meet with team members from receiving team and determine necessary services and supports for the individual. They will request an updated assessment and funding proposal for additional services if warranted.
- Notify Rep Payee of proposed move and provide contact information to agency personnel and proposed SLP/AFC/Nursing Home. If necessary, request a change of Rep Payee.

- **Title 14:** Special consideration must be given to any proposed change of residence to a more restrictive setting than the current living arrangement. The continuum goes from a person's own home to shared living, to staffed living, group home or assisted living and finally to residential facilities such as a nursing home or residential care home. Other options should be explored. Unless it is a dire emergency, the guardian must notify interested parties and obtain court approval *before* moving the individual from a private home to a group setting, such as a residential care home, assisted living facility, or nursing home by completing and submitting a [Motion for Permission to Change/Continue Residential Placement](#). After an emergency move, the guardian must notify interested parties of the move and ask the court for approval. Court approval is not required when an individual is moved to another home that is the same level of restriction (example: nursing home to nursing home, AFC home to AFC home) but the guardian must notify the court of the new address.
- Notify family (if involved) of the move to the new agency/nursing home and provide any updated contact information.
- Update electronic record with new demographic information.

A guardian may also decide to transfer an individual to a different agency/nursing home due to problems or conflicts with the current service agency/nursing home related to services and supports. When this situation occurs, the following steps should be taken first:

- The guardian should discuss their reasons for switching to a different service agency/nursing home with their supervisor and director **before** taking any action.
- Case notes/annual review should reflect steps the guardian has taken to try to resolve the issues leading up to their request.
- Regional Supervisor/Director may set up a meeting with current agency personnel and the guardian to discuss the guardians' reasons for requesting a change.
- If issues cannot be resolved but the individual, the guardian, and their supervisor agree with the need for a change, guardian will take the lead following steps outlined above.

Respite Safety

Respite providers are the employees of an individual employer (SLP, Family Member, etc). The guardian should be made aware of new respite providers hired along with any relevant experience the respite provider may have. The individual employer (SLP, Family Member, etc) is responsible for assuring that the respite provider:

- Can offer a healthy and safe environment for the person.
- Has a private bedroom for the person to use if overnight respite is anticipated.
- Has a home that meets basic health and safety standards (i.e., operable smoke and carbon monoxide detectors and securely locked firearms)
- Provides meals in keeping with any dietary restrictions.
- Is aware of any Behavior Support and/or Communication Plans.
- Understands and administers any medications the person requires.
- Has been trained on any Special Care Procedures.

- Has information necessary in the event of an emergency, including the contact information for the OPG answering service.

The guardian and service coordinator should check in with the SLP to assure that all of the above have been addressed. When possible (but not required), the guardian may choose to visit the person at the respite provider's home to assure all needs are being met in a safe environment. It is prudent for the guardian to check in with the SLP during home visits to determine the frequency with which respite is being provided and to assure that the person's budget will suffice to meet respite needs for the full fiscal year.

Power of Medical/Dental

A medical guardian is responsible for giving or withholding consent for all medical and dental treatment. In all instances, a guardian should ask questions and research the medical ailment until they understand the individual's condition, the treatment options, and the risks and benefits of treatment. A guardian has the authority to obtain a second opinion and to change doctors or hospitals if not satisfied with the care being given. A guardian should, to the greatest extent possible, become familiar with the medicines that are being prescribed, and should ask the doctor to explain their risks, benefits, and side effects, and what will happen if the individual doesn't take the medication. Whenever possible the guardian must include the individual in conversations about their medical care, recommendations, and decisions.

Above all, the guardian acts as a medical advocate. The guardian is there to be sure that the individual is getting the best care that is appropriate for their condition, in alignment with the person's stated preferences, wishes and values. If the individual is hospitalized, the guardian should visit the hospital on a regular basis to see the person and to reinforce to the hospital that there is a guardian. The guardian is the only person who can provide or authorize who may give/receive protected health information (PHI). For example, the guardian can give permission for an agency nurse or service coordinator to provide information about the individual to nurses and doctors, when necessary. **See Part Fifteen: OPG Programmatic Guidelines/ Privacy and Confidentiality/ Confidentiality**

If the person under guardianship objects to a medical decision by the guardian or refuses treatment, the guardian must bring the situation to the attention of their supervisor prior to making any decision. By law, the guardian may not consent to the involuntary administration of psychiatric medication or treatment. **See Part Seven: OPG Authority, Duties & Responsibilities, In-Depth Topics Within Each Power/ In-Depth Topics within Each Power / Power of Medical/Dental / Excluded Procedures (Lobotomy, Electroconvulsive Therapy, Sterilization, Involuntary Administration of Medication or Placement in a State Hospital).** The DAIL Ethics Committee can be consulted for guidance for both Title 18 and 14 cases. Guardianships ordered by the Probate Court also require the guardian to bring the situation to the attention of the court and receive guidance/permission on how to proceed.

If the person under guardianship executed a medical Advance Directive before losing decision making capacity, the authority of the agent/guardian and the instructions contained therein shall

remain in effect unless the Probate Division of the Superior Court expressly orders otherwise in a petition for review of the advance directive under [V.S.A. Chapter 231](#).

A guardian may be asked to make a decision to limit treatment, such as a “do not resuscitate” (DNR) order. These are difficult choices. A guardian should not let medical personnel or family pressure him/her for a decision. The guardian must take time to consult with the individual themselves, if possible, family members, team members, as well as their own supervisor. The guardian must understand the consequences of waiting if time is of the essence. The guardian’s role is to use substituted judgement to determine what the individual would want if they could tell us and to follow the advance directive (if one is in place). **See Part Seven: OPG Authority, Duties & Responsibilities, In-Depth Topics Within Each Power / In-Depth Topics within Each Power / Power of Medical/Dental / OPG End-Of-Life Decision-Making Guidelines**

Title 18: A guardian acting under a Title 18 guardianship order who is considering a decision to withhold or abate medical treatment for an irreversible and/or terminal condition for a person with an intellectual disability is required to present the case to the DAIL Ethics Committee as outlined in the [OPG End of Life Decision Making Guidelines](#). Medical documentation in support of or in opposition to treatment must be obtained and submitted to the DAIL Ethics Committee prior to presenting a case.

Title 14: A guardian acting under a Title 14 guardianship order must obtain approval for any major decision regarding treatment or abatement of treatment from the appointing court. [VSA 14 Chapter 111 §3075](#). Guardians for individuals under Title 14 should review the End-of-Life Decision Making Guidelines. If the situation warrants, the guardian may request a consult with the DAIL Ethics Committee when faced with an end-of-life decision for an Older Vermonter on their caseload. The recommendations of the committee are advisory as the guardian must obtain final approval for any major decision regarding treatment or abatement of treatment from the appointing court.

The role of a medical guardian is to seek health care and make treatment decisions which will:

- (1) Preserve quality of life through all chapters of an individual’s personal health journey.
- (2) Consider the desires of the individual (primarily), their family and significant others.
- (3) Be respectful of the dignity and integrity of the individual.
- (4) Promote the individual’s comfort and peace of mind.

A guardian with medical decision-making authority bears primary responsibility for providing consent for all medical and dental treatment, including decisions regarding initiation, continuation, or abatement of life-sustaining treatment. In making medical decisions, a guardian shall be guided by what they can learn about the wishes and preferences of the individual. Learning enough information to determine what the individual would want should be the primary goal of the guardian when making medical decisions.

Although the guardian is responsible for monitoring that the individual receives regular medical and dental care, the guardian is not required to be physically present at all appointments if the

individual is supported by an approved caregiver or an agency/facility staff person. While the guardian may not be present at all appointments, it is critical that guardians be actively involved in all medical care. This includes, to the greatest extent possible attending medical appointments during which critical decisions must be made, such as surgeries, cancer treatments, end-of-life decision making, etc.

The guardian should involve support staff and family members in the process of making major medical decisions. The guardian should make it clear that the role of staff and family are to provide information about what the *individual* would want, and not what they would want if they were in the same situation or what they want for the individual.

While the guardian may defer some level of medical decisions to the individual, the guardian may not give decision-making authority to the shared living provider, other care providers, family or to the case manager. Guardianship law does not give the guardian the authority to delegate decision-making authority to anyone except the individual.

The guardian should look for opportunities for an individual to make their own medical decisions. Only by practicing with simpler or less important decisions will an individual gain the skills of independent medical decision-making. Examples of initial steps may be making appointments or going alone to routine appointments such as dental cleanings or eye exams. Goals can be added to an individual's ISA or treatment plan to encourage self-advocacy in this area.

The guardian has a responsibility to understand the risks and benefits of treatment, the available options, and prognosis with treatment or without treatment. Although medical terminology may be difficult to understand, it is the responsibility of the guardian to persist until they feel they fully understand the medical information. A second opinion should be sought where a treatment choice involves significant risks. Ideally, the second opinion should be obtained from an independent physician, with no ties to the first physician. Nurses and direct care staff may also provide important information about how the individual may respond to treatment.

Many times, guardians are called upon to make medical decisions under pressure. It is rare for an immediate decision to be required. The guardian should ask whether a delay of a few days will put the individual's life or health in jeopardy. If not, request time to consult with the individual, the team, the family, and guardian supervisor/director about major medical decisions, and to get a second opinion if needed.

Generally, guardians do not sign general consents for medical treatment that is requested by provider agencies. If a guardian signs a general consent to medical treatment, important medical decisions may be made without the guardian being notified. Emergency consents are not really needed because OPG has a 24-hour on-call line, and a guardian is always on call. **See Part Fifteen: OPG Programmatic Guidelines / OPG On Call System.** The guardian should inform the agency and provider that, even without a signed general consent for medical treatment, the provider absolutely should call an ambulance or transport the individual for emergency care when appropriate. They do not need to obtain guardian permission first. The hospital or doctor

may give necessary emergency care when life or limb is in jeopardy while attempts are being made to contact the guardian.

When a person comes into guardianship, the assigned guardian should follow the steps below as they relate to the guardian's authority to give or withhold consent to medical or dental treatment:

- Immediately research if a completed COLST or advance directive has been established prior to guardianship. Read it thoroughly to become aware of the person's wishes.
- If a properly completed, pre-guardianship, COLST or advance directive is in place, determine if the probate court has a copy on file. If not, provide the document to the court. (Family court does not require this information.)
- Contact all health professionals participating in the care of the person and send them the guardianship order and your contact information. Introduce yourself in person when appropriate.
- Request copies of records related to the individual's current and historic medical information within 30 days of coming into guardianship. Review documents and scan them into the electronic record system.
- Determine if there are emergent medical issues requiring treatment or end of life decision making.
- If there is no COLST or advance directive in place, and a DNR or withdrawal of treatment is appropriate, obtain Probate court approval or review by DAIL Ethics Committee. **See Part Seven: OPG Authority, Duties & Responsibilities, In-Depth Topics Within Each Power / In-Depth Topics within Each Power / Power of Medical/Dental / OPG End-Of-Life Decision-Making Guidelines.**
- If an individual is placed in an out of state facility at any point during a guardianship appointment, the guardian must become knowledgeable of laws related to making medical decisions in the state where the person resides.

Obtaining Court Approval for Medical Decisions Title 14: Specific to Older Vermonters [14 V.S.A §3075](#)

A guardian shall obtain prior written approval by the Probate Court for the following situations:

- If the person under guardianship objects to the guardian's decision, on constitutional grounds or otherwise.
- If the guardianship order states the requirement of prior court approval for a specific surgery, procedure or treatment either in its initial order or any time after appointment of a guardian.
- Before withholding or withdrawing life-sustaining treatment other than antibiotics, unless the guardian is acting pursuant to an advance directive.
- Unless the guardian is acting pursuant to an advance directive, before consenting to a do-not-resuscitate order or clinician order for life-sustaining treatment, unless a clinician certifies that the person under guardianship is likely to experience cardiopulmonary arrest before court approval can be obtained. In such circumstances, the guardian shall immediately notify the court of the need for a decision, shall obtain the clinician's certification prior to consenting to a DNR or clinician order for life sustaining treatment

and shall file the clinician's certification with the court after consent has been given. **See End of Life Decision Making Guidelines for more details.**

To obtain court approval, the guardian should write a letter to the court outlining the facts, include medical documentation related to the situation and state clearly what is being requested. The court will decide if more information is needed and/or a hearing must be held.

The preceding procedures shall not apply if obtaining a court order would be impractical due to the need for a decision before court approval can be obtained. In such circumstances, the guardian shall immediately notify their supervisor and the court by telephone of the need for a decision and shall notify the court of any decision made.

Excluded Procedures (Lobotomy, Electroconvulsive Therapy, Sterilization, Involuntary Administration of Medication or Placement in a State Hospital)

[18 V.S.A. §9310](#) explicitly states: “nothing in this chapter shall be interpreted as giving the Commissioner authority to consent to sterilization, lobotomy, involuntary administration of psychotropic medications, surgery of the brain for the purpose of modifying behavior, or electroconvulsive therapy for the respondent. In addition, the Commissioner has no authority to place a person with developmental disabilities in a State hospital except pursuant to chapter 181 of this title.”

In addition, [14 V.S.A §3074](#) states clearly that, “the guardian of the person does not have authority to place the person in a State School or hospital, consent to an involuntary treatment or medication or consent to sterilization.”

The fact that guardians do not have the authority to consent to involuntary psychiatric treatment, involuntary medication or involuntary psychiatric hospitalization of an individual does not impact the process for any of these outcomes. The laws regarding involuntary treatment, involuntary medication and involuntary hospitalization are found at [18 V.S.A. Chapter 181](#) and explain in detail the legal process related to each of these topics. Guardians can express their opinions, but the process does not involve guardian consent or lack of consent. Individuals under guardianship may be permitted to sign themselves into a psychiatric hospital as a voluntary patient if the hospital thinks the individual understands their rights and choices. [18 V.S.A. Chapter 179](#). Once an individual is admitted to a psychiatric facility either voluntarily or non-voluntary, the guardian should contact the facility as soon as possible to notify them of their role, specific guardianship powers and contact information. Guardians also need to contact the individual's representative payee as admission to a facility is considered a change in residence even if it is temporary. Guardians have the authority to sign releases for records, to be involved in treatment team meetings, be informed of restraint usage (chemical and physical), proposed medication changes and discharge planning. Guardians should also insist that they be notified if an individual who was admitted voluntarily, chooses to sign themselves out of the facility or when the hospital or facility believes discharge is appropriate.

If a hospital or facility is pressuring the guardian to produce a plan to discharge a person when the guardian does not believe that the person is psychiatrically stable and/or there is no safe

discharge plan in place, the guardian should involve the OPG Director, relevant DDS staff, service provider staff, and possibly the AAG. The guardian should explain to the hospital/facility that the role of a guardian is to be the decision maker, whereas the Division is responsible for ensuring the existence of adequate community services.

Vermont law ([18 V.S.A. Chapter 204](#)) requires special court procedures and court approval for sterilization of a person under guardianship. This includes vasectomies. This law applies even if the individual under guardianship wants the sterilization; in fact, sterilization should never occur without the individual's agreement, unless there is an overwhelming health reason for the procedure. The law should be followed if the **result** of the procedure is sterilization even though the **purpose** of the procedure is to protect the person's health (e.g., the person has cancer, and a hysterectomy is recommended). The OPG Director should be consulted in any case where sterilization is being considered. If the individual wants sterilization, the usual procedure will be to refer them to Vermont Legal Aid and to work cooperatively with Legal Aid to obtain the necessary evaluations and court approval.

Definitions

- “Advance Care Planning” means an ongoing process of discussing, understanding, planning and documenting the individual's goals, values and wishes for specific treatments based on the individual's medical condition, personal preferences (to the degree known) and/or best interest.
- “End-of-Life decision” means a decision to authorize or withhold medical treatment when there is a reasonable expectation that the individual may die within a year.
- “Irreversible condition” means a condition that cannot be cured or eliminated.
- “Terminal condition” means an “incurable condition and irreversible disease which would, within reasonable medical judgment, result in death within six months.” (Title 18, § 5281 (10))
- “Advance Directive” is a document that describes an individual's treatment choices for life support measures and other end-of -life instructions. An advance directive means “a written record executed pursuant to section 9703, which may include appointment of an agent, identification of a preferred primary care clinician, instructions on health care desires or treatment goals, an anatomical gift as defined in subdivision 5238(1), disposition of remains, and funeral goods and services. The term includes documents designated under prior law as a durable power of attorney for health care or a terminal care document.” (Title 18, 231, §9701 (1)) Advance directives which existed before guardianship remain in effect unless the Probate Court orders a review.
- "Do-not-resuscitate order" or "DNR order" is a doctor's order that documents the decision to not attempt resuscitation in case an individual's heart were to stop or he/she were to stop breathing. A DNR order means “a written order of the patient's clinician directing health care providers not to attempt resuscitation.” (T18, 231 Section 9701 (8)) “A DNR order precludes efforts to resuscitate only in the event of cardiopulmonary arrest and does not affect other therapeutic interventions that may be appropriate for the patient.” (Title 18, 231, § 9708 (1))
- "Clinician orders for life-sustaining treatment" or "COLST" means “a clinician's order or orders for treatment such as intubation, mechanical ventilation, transfer to hospital,

antibiotics, artificially administered nutrition, or another medical intervention. A COLST is designed for use in outpatient settings and health care facilities and may include a Do not Resuscitate (DNR) and/or Do not Intubate (DNI) order that meets the requirements of Section 9708.” (Title 18, 231, § 9701 (6)). A DNR/DNI order for individuals under public guardianship requires the completion of a COLST.

OPG End-Of-Life Decision-Making Guidelines

The role of the Office of Public Guardian is to protect and promote the health of all people we serve and seek treatment which will best promote the individual’s overall well-being and functioning. These guidelines support the role of the Public Guardian when seeking health care to make treatment decisions that will:

- (1) Be respectful of the dignity and integrity of the individual.
- (2) Optimize health and wellness and maintain function as long as possible.
- (3) Consider the desires of the individual, their family, and other people who have a significant role in his/her life.
- (4) Promote the individual’s comfort and peace of mind.

The consideration of these four goals becomes the ultimate concern in end-of life-decisions.

Role of the Public Guardian

A public guardian (appointed by either Family or Probate Court) with medical decision-making authority bears primary responsibility for advance care planning and decisions regarding initiation, continuation or abatement of life-sustaining treatment. Clinical care and treatment should be inclusive of the individual’s preference. Proactive discussions with the individual (to the degree that s/he is able), caregiver(s), family members and clinician(s), anticipating likely future health care needs, and documenting decisions in an appropriate manner, can decrease crisis decision-making, and optimize the individual’s autonomy and improve quality of care. A public guardian considering a decision to withhold or abate medical treatment for an irreversible and/or terminal condition for a person with a developmental disability is required to present the case to the DAIL Ethics Committee using the process described later in this guideline. A public guardian acting under a Title 14 guardianship order must obtain approval for any major decision regarding treatment from the appointing court. (Title 14, 111, § 3075)

Advance Care Planning

The process of advance care planning is important for addressing future health care decisions that an individual is likely to face based on his/her current health situation, progressing medical condition(s) and/or advancing age. Planning for health care needs in advance of a health care crisis improves the quality of care for individuals at the end of life by aligning the individual’s goals, values and priorities (when known) with available treatments options. For an individual whose path to the end of their life is more certain, either due to emergent medical issues, chronic health problems or advanced age, these conversations may focus more on specific treatment options (e.g., resuscitation, intubation, tube feedings, transfer to hospital,

antibiotics, etc.). Consideration of the benefits of any proposed treatment relative to the burdens associated with that treatment should be discussed.

In any event, the following principles guide this planning:

- (1) The individual needs to be involved in these ongoing conversations to the extent that he or she can.
- (2) The individual's care team and family play an important role in preparing for and carrying out critical health care decisions. As a result, even when the individual can participate only in a limited way, it is a good idea for the family and team to explicitly explore advance care planning before the need for critical decision making occurs.
- (3) Advance care planning is a dynamic process that changes as the individual's situation changes. The discussion should be revisited periodically [as recommended in each individual's guardianship plan] or when an individual's health condition changes. Options that seem reasonable for someone in good health may seem less reasonable when the individual's health declines.
- (4) These discussions should be documented to serve as a guide to future critical health care decision making. [See resources at the end of this guideline.]
- (5) Advance directive documents may be helpful tools for advance care planning with seriously ill people but they cannot be formally filed by a public guardian and do not constitute a DNR/DNI order for people under public guardianship. Instead, a COLST form must be completed in cases where the individual's disease trajectory is predictable and limitations are appropriate in order to avoid harm without proportional benefit. (A DNR/COLST may also be completed to verify an individual's full code status.)

End of Life Decision Making Process

When a person under guardianship is clearly approaching the end of life, and/or when the answer to the question, "Would you be surprised if this person passed away in the next year?" is, "No," advance care planning should be used to identify end-of-life treatment goals. In making end-of-life decisions for an individual with an irreversible and/or terminal condition, a guardian, together with the team which is supporting the individual, will follow the guidance below:

- (1) Obtain a written medical opinion from the individual's physician as to whether the individual's condition is irreversible and/or terminal, and, if so, the physician's recommendation regarding life sustaining treatment for this individual. If the medical opinion concerning the individual's condition is not clear, or if it is a Title 14 guardianship, obtain a 2nd medical opinion.
- (2) Determine the goals of end-of-life care, including life sustaining treatment options for the individual (e.g., maximize quality of life, avoid hospitalization, keep individual at home, prolong life as long as possible).
- (3) Discuss the options for medical procedures or treatment and the possibility of limiting treatment with the individual, their friends and support workers, family members, and others who know the individual well. Involve someone who is knowledgeable or experienced in palliative care medicine, if one is available. The primary focus of these discussions is to assist the guardian to determine what the preferences, goals and values of the individual would be if they were in a position to decide. If unable to

- ascertain the individual's preferences, consider what would be in the individual's best interest (i.e., what most people would want in a similar situation).
- (4) The decision to withhold medical treatment for an irreversible condition may be pursued when the burden of treatment outweighs the benefits of treatment to the individual. If this appears to be the case and the person has a developmental disability, the public guardian will present the person's situation to the DAIL Ethics Committee. Title 14 requests for Older Vermonters will be presented to the Probate Court.
 - (5) Please keep in mind that, "No decision to withhold or abate medical treatment will be made based solely on the age, economic level or the level of disability of the individual under guardianship." (Title 14, § 3075 (f)(3))

The DAIL Ethics Committee

The DAIL Ethics Committee is a diverse group of people who have a personal or professional interest in the well-being of people with developmental disabilities and older Vermonters. The make-up of the Committee shall include people from a variety of backgrounds such as ethics, medical, faith-based, disability and clinical and offer a balanced, thoughtful and informed perspective on end-of-life decision making issues.

The Chair of the Committee is assigned by the Director of the Developmental Disabilities Services Division (DDSD). The committee is managed by a staff member of the DDSD. The other members are not employees of DAIL although DAIL employees may attend the meetings. Membership of the Committee is approved by the Director of the OPG at DDSD.

Role of the DAIL Ethics Committee

The function of the DAIL Ethics Committee is to review and make recommendations to OPG regarding end-of-life decisions. However, the role of the Committee is advisory and does not involve making diagnoses or treatment decisions outside of what medical professionals have advised. Final responsibility for any end-of-life decision for individuals with Title 18 guardianship lies with the Office of Public Guardian. If the DAIL Ethics Committee disagrees with a decision by a Public Guardian, the Director of OPG shall notify the Director of the Developmental Disabilities Services Division of the disagreement.

Decisions for Individuals under Public Guardianship

Any decisions by a Public Guardian to withhold or abate life-sustaining treatment for an individual with a developmental disability must be reviewed by the DAIL Ethics Committee. Where prior review by the DAIL Ethics Committee is not possible, review must be sought at a future meeting of the DAIL Ethics Committee. The Director of the OPG is responsible for deciding whether to request an emergency meeting of the DAIL Ethics Committee.

Any decisions by a Public Guardian to withhold or abate life-sustaining treatment for an Older Vermonter under Title 14 guardianship may be reviewed by the DAIL Ethics Committee in circumstances where the guardian is struggling with decision-making prior to seeking approval by the Probate Court. The director of the OPG is responsible for deciding whether to request an emergency meeting of the DAIL Ethics Committee.

Role in Policy Development

The DAIL Ethics Committee may advise DDS in the development of policy concerning health care decisions about people with developmental disabilities and age-related health issues.

Confidentiality

All DAIL Ethics Committee members are required to sign Notice of Non-Disclosure agreements. Proceedings of the DAIL Ethics Committee are confidential. Any participants in the DAIL Ethics Committee process shall maintain the confidentiality of information specifically pertaining to an individual. All protected health information that is used in the course of reviewing DAIL Ethics Committee cases will be treated as confidential material (e.g., personal identifying information will be redacted prior to distribution and copies shredded after use).

Frequency of Meetings

The DAIL Ethics Committee meets every other month or when needed. Emergency meetings may be by phone or video.

Preparation for a Case Presentation at DAIL Ethics Committee

Information about the individual who is being presented to the DAIL Ethics Committee needs to be sent out to committee members prior to the review date. This written case review, briefly outlining the information described below, needs to be submitted to the Director of the OPG one week prior to the presentation (or as soon as possible). Include only that information that is felt to be relevant to the specific case. The Director of the OPG will review the materials to ensure the necessary information is included.

- (1) Name of the individual(s) presenting the case. Include names of other members of the individual's team who will participate in the discussion.
- (2) Reason for case review by the DAIL Ethics Committee
 - (A) Why is the case being brought to the committee?
 - (B) What are the specific questions that the committee needs to consider?
- (3) Description of the person (use initials only) and brief history
 - (A) Photograph of the person being reviewed, if possible
 - (B) Demographics and history: age, place of residence, background information
 - (C) Current situation: significant others (family, friends, staff), how they spend their time, where they work, etc.
 - (D) Relevant personal information: joys, fears, interests, abilities
- (4) Medical status
 - (A) General medical issues and list of medications
 - (B) Chronology of medical events leading up to present situation
 - (C) Diagnosis
 - (D) Prognosis
 - (E) Treatment options and recommendations
- (5) Goals of treatment for this individual and other issues to consider

- (A) Comfort level of the person: Are they symptomatic? How do they respond to pain, hospitalization, enforced inactivity, etc.?
- (B) Communication style: ability of the person to communicate (expression and comprehension)
- (C) Person's understanding of, and input into, treatment options.
- (D) Perspective and values of significant others (family, friends, staff, private guardian)
- (E) What action(s) has the guardian and/or treatment team already taken?
- (F) What future actions are the guardian and/or treatment team considering?
- (G) What is important to this person in the time he/she has left?
- (H) What would this person consider to be “worse than death?”
- (I) What would they be willing and able to tolerate to increase the amount of time they have left?

Required Medical Documentation

Include relevant documentation from the attending physician(s) and other medical specialist(s) as described in the [*Guide for Physicians in Providing Medical Documentation for End-of-Life Decision-Making to the Office of Public Guardian*](#). The physician’s letter(s) should include a description of medical status, a determination that the person has an irreversible and/or terminal condition, and the physician’s recommendation regarding life sustaining treatment for this individual. One physician letter is required for Title 18 guardianships if it is clear that the person’s condition is irreversible and/or terminal; two physician letters are required if it is not clear.

The Meeting

Historically, meetings were held at the Waterbury State Office Complex. Since the beginning of the COVID-19 pandemic, meetings have been virtual. Meetings typically last two hours, though individual presentations vary depending on the complexity of a case. Guardians will be notified with the approximate time of their presentation. The Guardian should arrive 30 minutes early but are welcome to attend the entire meeting.

The meeting is convened and facilitated by the designated Chair of the DAIL Ethics Committee. The Guardian provides a brief overview of the case and describes the questions for consideration by the committee. There is in-depth discussion about the case with questions asked by Committee members to obtain sufficient information in order to provide a recommendation. The Chair of the DAIL Ethics Committee summarizes the discussion and proposes recommendations of the committee. Each member indicates their position and consensus is sought.

Post Meeting

Minutes will be sent out to all participants of the meeting and committee members. Documentation usually outlines key issues discussed, questions and concerns, recommendations, and follow-up. The recommendations of the committee are advisory. The presenter may be asked to bring the case back to a future meeting in follow-up to recommendations made by the

committee, or the Director may choose to report back to the committee on behalf of a Public Guardian.

Probate Court – Title 14-Request for DNR/COLST

If medical guardianship is ordered under Title 14, the guardian is generally required to obtain prior written approval from the probate court before withholding or withdrawing life-sustaining treatment other than antibiotics, unless there are pre-existing advance directives or it is impractical due to time constraints.

If an individual completed advance directives before guardianship was established, they should be followed unless they have been revoked by the Probate Court. The guardian should request guidance from the court regarding this situation as soon as advance directives are discovered. When the guardian has completed the end-of-life decision making process, the guardian must submit a written request for court approval for a DNR/DNI order (in the form of a letter) to the Probate Court. The written request should include the following information:

- (1) Description of the person and medical situation.
- (2) Description of process used to arrive at decision to request DNR and individual's involvement, preferences, values.
- (3) Description of opinions of other interested parties, especially family members.
- (4) Attach supporting documents from the individual's physician describing medical opinion and the likely outcome of attempts to resuscitate the individual. Because the Probate Courts vary in their requirements, the guardian should inquire about the Court's expectations. Some courts accept one physician's letter, while others expect one or more physicians to be on the phone during the hearing or even present in the court room.

Probate Court-Title 14-Notification of Death

After an individual dies, the guardian must notify the Probate Court by phone or in writing and send a copy of the Death Certificate to the court.

Decisions When Prior Review by DAIL Ethics Committee or Probate Court is not Possible

There are times when decisions to limit or withhold medical treatment may be made on an emergency basis prior to presentation to the DAIL Ethics Committee or review by the Probate Court. The Director of the OPG and the Chair of the DAIL Ethics Committee or Senior DDS staff shall determine when the following conditions are met:

- (1) The decision is clear and it is considered to be impractical to convene a timely DAIL Ethics Committee meeting or Probate Court hearing, and
- (2) Clear medical opinion (preferably written) indicates the individual has an irreversible and/or terminal condition and specifies that life-saving attempts are not indicated given the individual's current health situation. When it is not possible to get a written medical opinion in the event of an emergency, a verbal agreement from a doctor will

suffice but a written statement from the doctor will be required for the post-decision review by the DAIL Ethics Committee.

In addition, the public guardian shall seek agreement from the rest of the individual's team and from known family members involved in the individual's life and who are available to give input. Ultimately it is the guardian who makes the final decision.

The guardian shall present the case at a future DAIL Ethics Committee meeting, even if the person has died.

In a Title 14 guardianship, if the person under guardianship is likely to experience cardiopulmonary arrest before court approval can be obtained, the guardian shall immediately notify the court of the need for a decision by phone, shall obtain the clinician's certification prior to consenting to the do-not-resuscitate order, and shall file the clinician's certification with the court after consent has been given. (Title 14, 111, § 3075 (g1) (D))

Resources

Instructions for Clinicians Completing Vermont DNR/COLST Form

https://vtethicsnetwork.org/wp-content/uploads/2022/05/FINAL_2022_DNRCOLST_Effective-6.1.22.pdf

Thinking Ahead: My Way, My Choice, My Life at the End.

<https://www.coalitionccc.org/common/Uploaded%20files/PDFs/Thinking-Ahead-2022-Web.pdf>

Thinking Ahead Matters: Supporting and Improving Healthcare Decision-Making and End-Of-Life Planning for People with Intellectual and Developmental Disabilities.

https://coalitionccc.org/common/Uploaded%20files/PDFs/thinking_ahead_matters_final.pdf

Power of Legal

This power authorizes a guardian to obtain legal advice and to defend against court actions in the name of the person under guardianship. The guardian can initiate or facilitate a lawsuit on behalf of the individual or arrange for the defense of the individual in lawsuits, and to settle legal disputes involving the individual.

There is an array of circumstances that would authorize a guardian to seek legal representation for an individual under guardianship. The guardian should consult with an attorney in any situation involving litigation and, as with all powers, carefully consider what is most fair and beneficial to the individual. If the individual is charged with a crime, the court will appoint a [Public Defender](#) if the individual cannot afford an attorney. In other situations, the guardian may need to retain an attorney to protect or defend the individual's rights and interests. [Vermont Legal Aid](#) may be able to provide free representation to individuals with disabilities and people over the age of 60. The scope of their services is limited; however, additional resources for assistance can be found on their website [Vermont Legal Help](#) or by calling Vermont Law Helpline at 1-800-889-2047. Vermont Legal Aid, Probate and Family Courts also maintain a list of attorneys that may provide some services Pro Bono. Examples of situations that may not be covered by Legal Aid services include estate management, divorce, parental rights, adoption,

contract disputes, bankruptcy, property or rental disputes and accidental injury. If the guardian solicits a private lawyer on behalf of the client, the guardian needs to make it clear to the lawyer that payment will be from the individual's resources, and not OPG. The individual has the right to retain an attorney without the guardian's consent and to communicate freely with the attorney or other advocates of their own choosing. **See Part Nine: Other Guardianship Topics and Responsibilities/ Clients Who Pose Risks to Public Safety and/or Engage in Criminal Behavior** and **See Part Ten: Guardianship Modification/ Modification or Termination of Guardianship.**

Power of Contracts

This power authorizes the guardian to approve or withhold approval of any contract by or in the name of the individual under guardianship, which the person wishes to make or has made (since guardianship began).

There are many documents the guardian might be asked to sign on behalf of the individual under guardianship. Contracts can cover a variety of subjects ranging from intake and admission forms for nursing homes, rental/mortgage documents, in-home medical services (Home Health, Hospice, etc.), car loans, cell phone contracts, credit cards, insurance documents, and leases. The guardian should review the contract with the individual before signing it and involve them to the extent possible. In some circumstances it may make sense for the individual to also sign the contract, but it is the guardian's signature that bears legal authority. Guardians must also approve the ISA document (Title 18) and be notified of major changes to Care Plans (Title 14) for individuals under guardianship.

To avoid the appearance of personal financial liability, guardians should use the following generic language when signing off on a document requesting payment from the individual under guardianship: "Notwithstanding the foregoing, responsible party assumes no liability for payment of (whatever you are being asked to be responsible for). Initial this addition on the document. You should then sign as "Name of Guardian, Vermont Office of Public Guardian for Name of client". Additional examples of how to sign forms, especially ones required by nursing homes, can be provided by the Director or Intake and Diversion Specialist.

Individual Support Agreements (ISA)

The guardian must approve the ISA for individuals under their guardianship. Guardians should participate in the development of the ISA and in any updates so that major changes in the individual's needs or circumstances are reflected. Since the ISA is the document that outlines the services that the service provider/agency provides, it is important for the guardian to review it on a regular basis to monitor the appropriateness and effectiveness of all services. Based on this evaluation, the guardian may suggest changes to the ISA that would be necessary and/or beneficial to the individual.

Once the ISA has been approved, consent from the guardian is not required for activities the staff/agency use to implement the ISA, unless the program or activity specifically requires

written consent, such as for a driver's license. The guardian is responsible for staying informed of the individual's progress in areas outlined by the ISA.

The Guardian must be provided with a copy of the ISA, which is then included in the individual's guardianship file.

More information regarding ISA's can be found here [ISA Guidelines](#)

Power to Exercise General Financial Supervision Over the Income and Resources of the Person-Title 14 Only

This power addresses the day-to-day management of the individual's finances and grants the guardian authority over income and spending of the individual. The extent of the guardians' powers over finances will be granted by the court order, but in all respects the guardian assumes a fiduciary relationship to the individual: all decisions about the individual's finances must be made for the benefit of the individual and no one else. If the individual receives social security benefits, the guardian should attempt to seek a representative payee to manage their financial needs. If this is not possible the guardian should establish a bank account specifically for the individual. The guardianship account should be in the names of both the individual and DAIL, not the individual guardian's name. The individual will not have access to the funds, only the assigned guardian will.

Income includes wages and other earned income as insurance benefits, public benefits, tax refunds and pensions. The guardian should ensure that the individual receives benefits to which they are entitled under public programs. The guardian needs to seek the approval of the court for any major financial decisions. A guardian should not gift away any assets of the individual without securing prior court approval for the gift. If the individual has a considerable estate, the guardian should explore transferring the guardianship to a private professional guardian.

Individuals should have the opportunity to manage personal funds to the extent they are able. The guardian should keep a record of all deposits/payments on behalf of the individual or obtain this information from the payee and submit an annual financial accounting to the court. The guardian is responsible for seeing that the individual's property taxes, and federal and state returns are filed and paid.

Marshaling the Estate-Initial Guardian Actions for an Individual New to OPG Financial Guardianship

The court entrusts guardians of the estate with the responsibility to protect and preserve the person's assets and manage the person's affairs with prudence, intelligence and discretion. Guardians of the estate must carefully review the court order to determine the powers that have been granted so they can take appropriate action (NGA Standard 2). Consistent with that order, exercise only the authority granted and required to provide for the person (NGA Standard 17.VI). Locate and take control of the person's assets as quickly as possible after appointment (NGA Standard 18.I). [NGA Marshaling the Estate Checklist](#)

Tasks to complete may include the following:

- Obtain the original court order with a raised or gold seal from the Administrative Services Coordinator or the Court if it has not been provided. More than one certified copy may be needed if the individual has assets in several financial institutions.
- Notify the postal service to forward the person's mail to the guardian.
- Make an initial search of the residence and arrange to have locks changed to prevent others from gaining access.
- If the residence is vacant, notify local police to be alert for intruders or vandals. Check the residence frequently, winterize if necessary while determining if the property should be sold.
- If the residence is an apartment and the person will not return there, notify the landlord of the intent to vacate, allowing enough time to remove personal property and to clean the apartment.
- Verify that all property including vehicles are insured until decisions are made regarding the status of each item (NGA Standard 19.V)
- Take possession of all personal property to protect it from damage, loss or destruction. Consider storage costs versus value, taking into account the person's sentimental attachment to the belongings.
- Determine if the person is on Long Term Care Medicaid. If they are, then it is likely that the person's financial situation is relatively straightforward.
- Determine where the individual's personal income is located and what source(s) of income they receive.
- Contact any bank(s) where the person keeps their money and establish that you are now the financial guardian. This will likely mean going to a branch with the court order and your appointment letter.
- Open a separate checking account for the person. The account should be a "guardianship" account, titled in the name of the person, using the person's Social Security number, and DAIL (since the Commissioner is the appointed guardian), with the assigned guardian as an authorized user. In order for DAIL to be the titled account holder, the bank will need the State of Vermont Employee Identification Number (EIN). Contact the Administrative Services Coordinator or the Intake and Diversion Specialist to obtain this number before going to the bank.
- Do not close out any accounts where automatic deposits are being made unless there is no other option to safeguard the assets.
- Obtain legal advice before closing any account or transferring any funds from any account that the person owns jointly with anyone else.
- Reach out to all other financial institutions where the person has any assets to establish the guardianship and get the information as to what the value of the asset is and how the person can access it. Provide information with new bank account information if direct deposits are occurring.
- If the person receives SSI and has moved from the community to an Adult Family Care home, assisted living facility or a nursing home, notify Social Security of the move.
- Complete an inventory of all assets for the court within 30 days of being appointed. The [Inventory](#) form should reflect the person's assets on the date that OPG was first appointed

guardian, which may have been an emergency temporary appointment. This step protects the guardian from family members or other interested parties who may question the existence of certain items. Have at least one witness sign the inventory and photograph or videotape the belongings if possible (NGA Standard 18.VII).

- Notify your Supervisor and the Director of the approximate value of the estate of the individual when financial guardianship is assigned. The value may affect the OPG's Surety Bond which is a type of insurance that protects the individual's estate against loss in the case of mishandling of the estate by the guardian. OPG has one bond that covers all Title 14 guardianships that include financial supervision over income, resources and assets.
- Apply for Long Term Care Medicaid once assets have been determined and if needed. **See Part Twelve: Understanding Government Benefits/ Center for Medicaid and Medicare Services Medicare (CMS)/ Medicaid/ Long Term Care Medicaid (LTCM)**
- Arrange for a company to assist with clean up and disposal of the home and unwanted household items.
- Determine if there is a cause for legal action to recover or protect assets and contest any questionable claims against the estate (NGA Standard 17.XII).
- Collect all the income and other money due to the person. Apply for a representative payee if the person is receiving Social Security benefits or veteran's benefits. OPG representative payee services should only be pursued when there are no other viable options. If the person's living situation is uncertain, it may make sense to wait to determine who is the most appropriate rep payee.
- If OPG representative payee services are needed, discuss with your supervisor and then obtain permission from the OPG Regional Supervisor who oversees the services. Once approved, notify the OPG Community Financial Specialist and fill out the [required intake form](#).

Managing a Bank Account

The goal should be for individual guardians to manage bank accounts for as short a period of time as possible and transition the individual's funds to a rep payee account. Be careful when initially setting up a guardianship account and/or closing an individual's private account. The guardian should fully understand the impact on any automatically deposited income or debited expenses as some financial institutions will not deposit funds into a rep payee account. In this circumstance, an account in the individual's name will need to be maintained. When managing a guardianship account, either initially or ongoing, it is a good idea to set up some sort of accounting system so that you can keep good track of the income and expenses and simplify the court reporting process. Contact the Intake and Diversion Specialist for examples of financial tracking systems.

Bills and Debts

Make sure that the person is only paying for things that they continue to use and need. Look particularly for automatic debits from bank accounts and make sure you understand what they are for. Cancel any services that are no longer necessary, this includes insurance products that may not provide any benefits.

Sometimes people come into guardianship with large debts that they will not be able to repay. Reach out to the creditors to see if debt can be forgiven or reduced. You may not be successful, and the person may continue to receive collections notices.

If a creditor brings a small claims action, you may be able to argue that the person is judgment proof. Form 100-00126 [Small Claims Answer](#) may need to be filled out and submitted to the court. You should also consult with VT Legal Aid.

Some individuals receive financial benefits that are considered exempt income. Complete Form 128 [Disclosure of Exempt Income](#) and submit to the court when necessary.

Making Purchases for Clients

When making a purchase for a client, it is best practice for the guardian to avoid making the purchase with their own personal funds and then reimbursing themselves from the client's personal or rep payee account. If an emergency financial situation occurs, the guardian should notify their supervisor or the Director prior to making a purchase. The guardian is required to obtain receipts for any purchase made using their own funds.

Selling Assets and Spending Down Accounts

If the guardian discovers that a person under public guardianship has a lot of assets, the guardian should investigate whether a private guardian is warranted. OPG is the guardian of last resort so if a person can pay for private guardianship services, public guardianship is generally not appropriate.

Depending on what the person's benefits and living situation are, the guardian may need to sell off assets and/or spend down the person's resources either to pay for long term care or to qualify or maintain Long Term Care Medicaid.

In order to sell real estate, the Guardian must get a license to sell from the Probate Court. **See Part Seven: OPG Authority, Duties & Responsibilities, In-Depth Topics Within Each Power/ In-Depth Topics within Each Power/ Power of the Sale or Encumbrance of Property.**

Selling other items does not generally require court approval, but good documentation is required. For example, the sale of cars, guns, or any collections that may have value should include an appraisal, or some other evidence of the item's value if an appraisal is not possible/warranted, so that the guardian can show that fair market value was received for the item.

Medicaid rules about spend downs should be followed if the goal is for the person to eventually receive Long Term Care Medicaid. Spenddown rules can be found here [AHS Health Benefits Eligibility & Enrollment](#) However, the rules are complicated, and it is always a good idea to consult with professionals who do this work to get the right advice for particular situations. DVHA (Department of Vermont Health Access) benefits specialists may help when Medicaid

applications are pending, and VT Legal Aid can be consulted. **See Part Twelve: Understanding Government Benefits/ Center for Medicaid and Medicare Services Medicare (CMS)/ Medicaid.**

Just because there are assets to sell does not always mean that selling is the best course of action. Sometimes it will make more sense to allow a foreclosure or repossession process to play out.

Pre-Need Burial Arrangements

Pre-need/arranged burial plans can be purchased using the individual's money at any point in an individual's life. When the individual has sufficient assets, or assets that need to be spent down to qualify for benefits, it is usually wise to purchase a pre-need burial plan prior to their death. Plans can cover all or a portion of the cost of cremation, burial, a burial plot, headstone and other incidentals included in a funeral plan depending on the financial resources and wishes of the individual. Prior to setting up a plan, the guardian should talk with the individual and their family members to find out if any burial arrangements have already been put in place. If no information is available and the guardian suspects there may be a family burial plot or a plan in place, calls should be made to funeral directors in the area(s) the individual previously resided. Town clerks are a good resource as they often retain a registry of burial plots purchased in their towns/cities.

Pre-need plans can be paid in full (if the individual has the funds) or in installments. Funeral directors can advise the individual/guardian how to set up each type of plan. Individuals who have a life insurance policy can also sign over the face value of the policy to the funeral home to cover a portion (if it is less than the cost of the plan) or the entire cost of the pre-need plan. The funeral director can advise the guardian/individual how to set this up.

Plans that have not been paid in full at the time of the individual's death, can be modified by the guardian to reflect the remaining financial resources of the individual or family if they are involved. Funds left in the individual's personal or STABLE account can be used to offset the remaining cost of the burial.

When setting up a pre-need burial plan for individuals receiving Medicaid/SSI, be aware that the total cost of the burial plan (cremation or casket), service, cemetery plot and headstone must not exceed \$10,000. Documentation of the purchase(s) are required when completing the annual Medicaid review form.

Removing OPG as Financial Guardian

If you transition someone to a rep payee and there are no more assets for you to manage, you can request that OPG be removed as financial guardian. A [Motion to Terminate or Modify Adult Guardianship](#) can be filed with the court by the guardian. This is often the case when someone is on Long Term Care Medicaid and has moved to a long-term care facility.

Power of the Sale or Encumbrance of Property

Title 14: This power authorizes the approval of the sale or encumbrance of real property, such as buying or selling real estate. **See Part Seven: OPG Authority, Duties & Responsibilities, In-Depth Topics Within Each Power/ In-Depth Topics within Each Power/ Power to Exercise**

General Financial Supervision Over the Income and Resources of the Person-Title 14 Only.

For transactions involving real estate (land or buildings) the guardian must get explicit approval from the Probate Court by demonstrating that the individual will both benefit and be able to maintain his or her financial obligation in conjunction with the arrangement. The court may authorize the sale of real estate under any of the following conditions:

- The personal estate of the individual is insufficient to pay the expenses of maintaining the individual or their family;
- The personal estate of the individual is insufficient to pay the debts of the individual;
- It is in the interest of the individual to sell the real estate to make a better investment.

If a family member or other person is going to live in the individual's house (tenant) or use their property (such as a car) without paying for it, the guardian should notify their supervisor or Intake and Diversion Specialist for additional guidance. The court does not require any documentation should this occur; however, the guardian may decide to notify the court.

Title 18: The power to approve or withhold approval of the sale or encumbrance of property is a subset of the general supervision power and does not require court involvement.

A guardian's financial powers enable the guardian to supervise the individual's money and property. Matters concerning spending, conserving or investing money or property become the responsibility of a financial guardian. The extent of the guardian's powers over finances will be granted by the court order, but in all respects the guardian assumes a fiduciary relationship to the individual. In other words, all decisions about the individual's finances must be made for the benefit of the individual and no one else. The guardian is responsible for notifying the court should any potential conflict of interest arise.

The guardian must keep the person involved in estate management decisions to the maximum extent possible. Consider the person's wishes, currently expressed or contained in any directives, such as a will, trust, or Power of Attorney. The guardian should obtain a copy of the person's will, if one exists, and consider the portions dealing with the person's intended distribution of assets. These intentions are useful in determining how to handle estate assets. Caution should be exercised, however, when considering the person's history of spending or gift giving, as these activities may have been the result of coercion or manipulation.

The guardian must exercise extreme caution when communicating with family members, prospective placements, service providers, etc. regarding the financial status of the person under guardianship. When in doubt, do not share information. Consult with your supervisor or the Intake and Diversion Specialist for additional guidance.

Sale of Real Estate Steps

- (1) Complete a visual inspection of the inside and outside of the property. Take photos.
- (2) Secure a key and/or re-key the property.
- (3) Inventory the contents of the home.
- (4) Contact utility companies for account numbers and balances owed.

- (5) Minimize utilities/winterize the home.
 - (A) Close windows/shut blinds.
 - (B) Shut off water main and drain pipes/toilet.
 - (C) Make sure heat is on at least 55 degrees and make sure there is enough fuel in the tank/funds to pay heating bill.
 - (D) Cancel utilities that are no longer needed.
 - (E) If during winter months, there are not funds to pay for fuel, you will need to hire a plumber for professional winterization.
- (6) Contact the Town Clerk to obtain tax bill, land records, and check for liens. The mortgage or deed of trust is recorded in the county land records, usually shortly after the borrowers sign it. If the loan is fully repaid, the lender will record a release (or satisfaction) of mortgage or a reconveyance of deed (used in conjunction with deeds of trust) in the county land records. Many towns have land records/tax bills/property maps available on their town websites.
- (7) Contact the bank who holds the mortgage to obtain information on monthly payment and balance owed. If the house is in foreclosure find out their foreclosure process.
- (8) Contact the insurance company for the Homeowner's insurance policy and request a copy of the policy.
- (9) Contact Probate Court to find out if a will is on file to see what, if anything, it outlines about the house.

If the house can be sold, follow the steps below:

- (1) Obtain a License to Sell before the house is put on the market. File [Motion For License to Sell or Convey Personal Property](#) and the Property Description with Probate Court to obtain the [License to Sell or Convey Property](#)
- (2) Hire an attorney to prepare closing documents and assist with any legal issues. They will be paid at the time of closing.
- (3) Contract with a Real Estate Agent to list the home for sale. If there are additional owners, they will need to sign the listing contract and Purchase and Sales Contract.
 - (A) Ask the real estate agent to provide a Comparative Market Analysis (CMA).
 - (B) Listing the house will require a Seller's Property Information Report (SPIR).
 - i) Complete this document only with information that is an observable fact (i.e., 2 baths, municipal water, gravel driveway). Clearly write "person completing this SPIR has never occupied the property." Write unknown for any answers that you do not know for a fact.
- (4) Empty the home if necessary. The guardian should hire someone to do the work of emptying the home using the person's resources. In some circumstances the home can be sold as is. However, there may be no other option for paying for the removal, in which case, you should consult with your supervisor for assistance.
- (5) Arrange for lawn maintenance and/or snow removal.
- (6) Complete and send an application to the town clerk's office to obtain a *Certificate of Compliance* for the property you are selling.
- (7) Send *Certificate of Compliance* to the attorney to obtain the *Property Description*.
- (8) Review offers as they come in.
- (9) Once an offer is accepted make notes of inspection dates/other due dates.

- (A) Keep a copy of the fully executed Purchase and Sales Contract and all addendums.
- (10) Attend the closing, and obtain copies of:
 - (A) Settlement Statement
 - (B) Guardian's Deed
 - (C) Agreement on Allocation of State of Vermont Tax Credit
 - (D) Any additional documents signed at closing
 - (E) The check from any proceeds from the sale

After the sale, follow the steps below:

- (1) Deposit proceeds into appropriate account.
- (2) File [Guardian's Report on Licence](#) with the Probate court.
- (3) File State and Federal income taxes when they are due next.
 - (A) Review [IRS Tax Topics](#) regarding taxes due on sale of residence
 - (B) If the gain is more than \$250,000 or the sale was of a property other than a primary residence, there will be taxes due. Consult a tax professional.

Part Eight: Guardian's Role with Other Entities

Sharing The Court Order with Service Providers and Others

Once a Court determines that an individual is in need of Guardianship, an order is written that specifies the specific powers and duties granted to Office of Public Guardian (OPG) via appointment of the Commissioner, Department of Disabilities, Aging, and Independent Services (DAIL) for that individual. The court order is reviewed by the guardian and then shared with the service provider agency who place a copy of the order in the individual's agency record. The guardian may also need to share the order with medical providers, banks or others who require proof of the guardianship.

Guardian Consent and Notification Requirements

The areas for which consent, and notification is required is dependent upon each individual person under guardianship and is based upon the powers of guardianship for which the OPG is responsible. To exercise these consents, the guardian needs full information about the individual's preferences, needs, abilities, and resources. Ordinarily, this type of information is communicated by ongoing, informal communications between the guardian, the person, service coordinator, residential provider(s), day services provider(s), and the agency or facility.

While each individual receiving services from Office of Public Guardian has an assigned guardian, there may be occasions during which the assigned guardian may be unavailable. If the assigned guardian is not available in an emergency, any other guardian may act in his or her place. **See Part Fifteen: OPG Programmatic Guidelines/ OPG On Call System.**

Situations Requiring Immediate Notification

- Any events requiring a Critical Incident Report.
- Serious or unusual illness or injury; death.
- Emergency medical intervention or treatment.
- Any hospitalization and discharge from hospital.
- Change in who lives in home due to death, illness, or other emergency
- Missing for more than a brief period as specified in the ISA or Plan of Care.
- Any situation in which the individual may need legal counsel to protect his or her rights such as questioning by police or APS/DCF investigators, arrest, etc.
- Use of physical restraint.
- Suspicion and/or report of abuse, neglect or exploitation.
- Unusual event that may affect person's wellbeing.

Situations Requiring Prior Consent

There are certain other situations where the guardian should be contacted for prior consent. In these situations, the guardian can give verbal consent:

- Change of residence. When an individual is moving to a residence out-of-state, a [Living Out of State Report Form](#) must be completed by the Service Provider for individuals under a Title 18 guardianship order.
- Change of composition of the home (non-emergency).
- Change of employment.
- Change of medical or dental provider.
- Out-of-State Travel.
- Participation in an activity that involves unusual risk (e.g., wilderness camping, riding on the back of a motorcycle, bungee jumping, driving 4-wheeler).
- Medical treatment for that requires written consent from the individual.
- Disclosure consent pursuant to the Health Insurance Portability and Accountability Act (HIPAA) or to release personal information.
- Any contract that the person might sign, such as rental agreement, etc.
- Any formal application for services, license or benefits such as VA, Social Security, housing assistance, Home Health, Residential Care Contract etc., which requires person to sign.
- Any documents involving legal proceedings/obligations which require a signature.

Situations Requiring Notice, but not Prior Consent

There are other situations where the guardian should be informed so as to exercise his or her overall responsibilities, but where prior consent is not routinely required.

- Medical procedures when the health provider does not require written consent.
- Changes in Individualized Education Program (IEP) or school program.
- Major life developments such as dating, death of relative, changes in interaction with family or friends, ect.

- Changes in staffing which may have an effect on the individual's program or state-of-mind.
- Changes of team members whom the guardian would contact for information.
- Contagious illness of staff or residents within the house.

Office of Public Guardian Notification and Consent Checklist

Transitioning from Department of Children and Families (DCF) Custody to Adult Guardianship

Children and young adults under the age of 18 do not have the same rights as adults, unless they have been emancipated. Parents/guardians have the duty and the authority to provide for their needs and keep them safe. In some cases, DCF/FSD (Family Services Division) has been assigned by the Family Court to provide guardianship services to the child/youth in the absence of a responsible parent or family member. DCF/FSD Guardians operate from a framework where it is abuse or neglect to allow the child to make decisions that can be perceived as harmful to their health and safety. Decisions can be made by the guardian that contradict the actions and/or will of the child in some circumstances.

On the date of a young adult's 18th birthday the law automatically grants them autonomy and control over their own lives in many basic and fundamental ways. Adult guardianship (OPG or private guardianship) does not change this fact. Adults under guardianship who possess the ability to exercise that autonomy cannot be restrained in any manner from doing so. A guardian for adults is not granted the authority to override the person's own will; guardianship is meant to replace decision making capacity that simply does not exist. Individuals under adult guardianship have the right to make bad decisions that could harm their health and safety unlike children who have been assigned a guardian. **See Part Four: Roles of the Guardian/ Dignity of Risk.**

The DCF Social Worker should start using the "[DCF Transition to Adulthood Checklist](#)" when the youth turns 17. This tool is designed to support effective transition planning including assignment and follow through on the necessary tasks and responsibilities to be accomplished during the last year that the youth is in DCF custody. Some of these tasks include applying for Social Security and Medicaid, determining eligibility for DS services, completion of a needs assessment, development of a funding proposal and housing options. If the individual will continue to live with their DCF foster parent, a discussion of the differences in the roles of a foster parent and shared living provider should occur.

The DCF Social Worker and the OPG Intake and Diversion Specialist or Regional Supervisor should work together to determine whether or not the youth will need a guardian when they turn 18. Alternatives to public guardianship should be explored before petitioning for OPG to be the guardian. If no alternative to public guardianship is available and/or appropriate, the DCF Social Worker will submit a petition to the State's Attorney in the county in which the person resides six months before the youth's 18th birthday.

Each year, youth transition from DCF custody into public guardianship. For this to be successful, it is essential to work on a collaborative transition process. Team members should include the youth's DCF social worker, the youth themselves to the extent possible, the

Designated Agency's Service and Intake coordinator, the foster parent/shared living provider, educational surrogate and special education director, if appropriate, and any other individuals identified by the youth or the team as important. OPG should become part of the team and attend transition planning meetings while the youth is still in DCF custody so long as it is apparent that the youth will both need and want a guardian when they turn 18.

When a youth is exiting custody of the Commissioner of DCF, the DS service coordinator or OPG staff should contact the DCF Social Worker where the youth is served and request copies of their Social Security/ Medicaid cards, birth certificate, and any other relevant DCF records including the case plan. Efforts should be made to do this prior to the youth turning 18. Once the individual is 18, a records request will need to be completed to get relevant documents.

Relationship with Family and Friends

The guardian's relationship with the individual's family members and friends should be based on recognition of their contribution to the person's quality of life. The guardian should assist the individual in maintaining, establishing, or re-establishing contact with family and friends, unless to do so would not benefit the individual or the individual does not wish to have a relationship with a particular family member or friend.

The guardian can communicate regularly with family and friends and involve them in the individual's life and in the decision-making process, to the extent that their input would benefit the individual and the individual wants that input. Guardians should avoid sharing information about the individual's financial status with family members unless absolutely necessary. An exception to this may be when arranging pre-need burial plans or making funeral arrangements upon the death of an individual.

Part Nine: Other Guardianship Topics and Responsibilities

Limitations of Guardianship Powers

Even though the VT guardianship statutes seem to indicate that a guardian can override the decision of a person if that decision presents serious risk of harm to the person, they do not provide any mechanism for compulsory authority, i.e., guardians cannot compel people to do or not do anything against their will. Guardianship does not include the powers of magic, force or involuntary treatment or medication. Others often believe that "involuntary guardianship" equals "involuntary treatment" and "involuntary medication," but it is not true. Also, guardians can't force a person to live in a specific place or manner if the person refuses.

Alerting the Commissioner of DAIL and any other relevant Department Commissioners

The DAIL Commissioner is the actual guardian of all individuals in public guardianship, and her authority has been delegated to the public guardians who work in OPG. Due to the large number

of people in guardianship, the Commissioner is rarely involved in the day-to-day decision making for specific people. However, there are situations that warrant notification to the Commissioner of DAIL, and additionally at times the Commissioners of other Departments, such as the Department of Mental Health and/or the Department of Corrections.

The Commissioner's Alert System was developed in 2020 to address high risk/high profile situations for some individuals under public guardianship. A Commissioner's Alert should be sent to the Commissioner of DAIL, and any other relevant Department Commissioners when the assigned guardian and the Director of the Office of Public Guardian feel that the relevant service system (Developmental Services, Adult Services, Corrections, Mental Health Services) is not providing a level of service which addresses health and safety risks in an adequate fashion, and there is a clear risk of harm that is beyond the guardian's power to rectify.

The intent of the system is for OPG to ensure that guardians describe their efforts to gain improvements in services in full detail. Documentation may include case notes/emails and texts describing advocacy with service providers to address health and safety concerns, case log entries indicating dates of home visits/in person visits and annual review(s). A public guardian can advocate and collaborate with an agency but cannot single-handedly change the scope of services for an individual under guardianship.

Addressing an Individual's Rights, Responsibilities, and Choices

Firearms

Persons under guardianship (Both Title 18 and Title 14) are prohibited from possessing firearms and ammunition under the Federal Firearms Prohibition under 18 U.S.C. § 922(g)(4). [Federal Firearms Prohibition Under 18 U.S.C.](#) There are no exceptions to the firearm prohibition. Persons under guardianship may accompany a licensed hunter on a hunt.

Dangerous Weapons

If a person under guardianship would like to purchase and possess a potentially dangerous weapon, the guardian should first consult with the DS Public Safety Specialist to determine the legality of the weapon in Vermont. For example, zip guns and switchblade knives are illegal to possess in Vermont. If the weapon is legal to possess, such as a crossbow, the person under guardianship must present a written safety plan to their guardian, which outlines the safe use/storage of the weapon. The OPG Director, in consultation with the DS Public Safety Specialist and the guardian, will review and approve the plan. If approved, the plan must be reviewed annually or following any incident of aggression, threat, or violence, regardless of if the weapon was involved.

Other Potential Weapons

While almost any item could be used as a weapon, if that is an individual's intent, the following items could easily and/or mistakenly be used as a weapon. Therefore, they require guardian's approval and a written safety plan, which outlines the safe use/storage of the item. This plan

must be reviewed annually or following any incident of aggression, threat, or violence regardless of if this weapon was involved.

- Axe/hatchet
- Chainsaw
- Knives with blades longer than 3.5 inches
- Blow torches
- Pepper spray/Bear Spray
- Airsoft Guns/Paintball Guns
- Archery Bows
- Trapping equipment
- Slingshots
- Realistic looking replica/toy guns as they put a person at risk of being perceived as armed
- Any item the individual has previously used as a weapon

Weapons in the Home

All weapons in the home of a person under guardianship must be securely stored.

All guns must be locked in a safe/gun cabinet/locked drawer or have a cable or trigger gun lock.

All new guns purchased after 2005 come with free gun locks. Gun locks are available for free at many police departments and mental health agencies around the state. The only exception would be guns on display that have been permanently disabled.

Mail

In general, no one (other than the guardian) should open another person's mail, and it is the guardian's role to assure that a person's right to receive mail unopened and to read it privately is protected with exceptions including:

- If the guardian has financial authority, the guardian may direct mail that appears to be financial in nature (e.g., bills, bank statements) be directed to a designated person handling the individual's finances (guardian, representative payee, etc.). Similarly, ads and solicitations (such as credit card solicitations) may be directed to a designated person.
- Be aware that some post offices will not forward mail from the Social Security Administration.
- Correspondence regarding a person's benefits and/or continued eligibility for benefits may be directed to the representative payee, case manager, guardian, or other person responsible for maintaining the person's eligibility for benefits.
- Correspondence from a court or lawyer may be directed to a guardian with authority over legal matters, except correspondence from a lawyer representing the individual in a matter pertaining to the guardianship must be given to the individual **unopened**.
- Correspondence from a person who has been substantiated for abusing, neglecting, or exploiting the person should be withheld from the person and forwarded to the guardian. The guardian should notify the author of the letter that it will be not delivered.

If a person under guardianship cannot read, the best practice is to give the letter, unopened, to the person and let the person decide whom they want to ask to read it to them. If an individual cannot communicate this information the guardian can designate a person (SLP, Service Coordinator, Social Worker, etc.) to read the letter to the individual or hold the letter until the guardian can be present to read it to them.

If the letter comes from someone who has previously caused emotional stress to the individual under guardianship (such as a former boyfriend or family member), the guardian may require that the letter be opened in the presence of someone who will be able to provide emotional support.

Internet Safety

Many individuals under guardianship use computers/tablets/cell phones to obtain information and to communicate with others. The guardian may need to play a role in helping the person use the internet safely to avoid problems or to deal with issues that arise.

Online activity monitoring should happen with the consent of the person. Examples of monitoring strategies might include:

- Sharing logins with team member/s who would periodically check the person's online activity.
- Assisting the individual to choose privacy settings to keep personal information and communication private.
- Restricting access to certain websites through apps and filters with the consent of the individual.

If internet/social media monitoring/restrictions are to be put in place, they should be outlined in the Behavior Support Plan which would require the approval of the local Human Rights Committee. Individuals under an Act 248 order may have additional restrictions for use of the internet and social media outlined in the court order that must be followed. **See Part Nine: Other Guardianship Topics and Responsibilities/ Clients Who Pose Risks to Public Safety and/or Engage in Criminal Behavior/ Individuals on Act 248 and the Guardian's Role.**

With a person's right to access communication and social media comes associated risks. These risks include being exploited financially, inadvertently engaging in illegal activity, becoming involved in relationships with strangers that can lead to unsafe encounters and marriage proposals. When the person's safety is compromised due to engaging in these risky behaviors, it is the role of the guardian to educate the individual about the potential dangers and consequences of their actions. Safeguards outlined above can be put in place. The guardian is obligated to contact APS and/or law enforcement if the individual has been exploited or abused in any manner as a direct result of their internet contacts.

Communication between the guardian and person under guardianship through social media should be used only if there is no other way to effectively exchange information and/or to maintain a relationship with the person. If the guardian uses social media to communicate with

the person, precautions should be taken to safeguard the guardian's personal information and their confidentiality. Guardians can set up a Facebook account using an office/team account vs. their own personal account. Texting should only occur on an OPG assigned cell phone.

Sexuality

Sexuality is a basic human drive, and we support the right of all people to find satisfying ways of expressing their sexuality. Many people with developmental disabilities need education about safe sexual expression, and the opportunities to talk about and discover their sexual feelings. Many also need help and support to develop healthy social relationships. In general, all adults, including those with developmental disabilities should have support to develop social and sexual relationships of their own choosing.

Guardians who have responsibility for general supervision need to be informed of potential and actual sexual relationships of the people for whom they are guardian. This is because sexual relationships can have a profound effect upon a person's health, safety, and/or emotional well-being, and by granting the power of general supervision, the court has determined that the person needs help to protect his or her health, safety, and emotional well-being.

In general, guardians support a person's privacy and choice in sexual relationships. Guardians will assure that the person understands the risks of disease and pregnancy, has access to contraception, and has the ability to decline or get out of unwanted sexual contact. Guardians must always be cautious to avoid inserting their own personal beliefs and positions on issues of sexuality when supporting a person.

There are some limited situations where it is the responsibility of the guardian to take action. Intervention by the guardian must always support the person's right to choose, while at the same time, keeping with the power of general supervision to assure the person's overall safety. These include:

- Illegal relationships (e.g., with a child, prostitution)
- Relationships when one of the partners does not consent
- Emotionally or physically abusive relationships, which appear to exceed the emotional resources of one of the partners
- Sex that could result in pregnancy when there is a strong health or emotional outcome, why pregnancy would be dangerous to or for the person

Gender Identity

At times a person determined to need a guardian may express thoughts, concerns, and/or desire related to their gender identity. As with the area of sexuality, guardians should always support the person's right to their gender identity. Guardians should work together with the individual and their team to assure that all relevant supports are identified and in place. Supports may include referrals to local support groups, to local LBGTQ support centers, health services, along with mental health support as needed.

Diversity and Inclusion

The State of Vermont is committed to building on local, state, and national efforts to advance equity and social justice, and recognizes the important role government holds in removing structural barriers and increasing meaningful inclusion and representation. It is the policy and practice of the State of Vermont to assure that no person will be discriminated against-or be denied the benefit of-any activity or program.

It is the obligation of the guardian to advocate for the rights of all individuals supported through OPG. It is of particular importance for guardians to assure that individuals of color are not subjected to discrimination or inequities based upon their racial/ ethnic identity or heritage.

Marriage/Civil Union

Marriage/civil union by a person under guardianship is valid whether or not the guardian gave consent. If the guardian knows an individual wants to get married, the guardian should recommend that the couple obtains pre-marital counseling and that the couple understand how marriage will affect their benefits. For example, an adult who receives SSDI as a disabled dependent child will lose those benefits upon marriage and may have the benefits reinstated only if the marriage is annulled. SSI benefits for a married couple are lower than individual benefits. The guardian should assist the individual to discuss financial impacts of a marriage with the representative payee prior to getting married.

Ordinarily a guardian should provide support and assistance to a couple who wishes to get married, recognizing that it may take some time for a couple to understand the advantages and disadvantages of marriage/civil union. If the couple decide to get married without the guardian's consent, the marriage is still considered legal. The guardian should continue to support and monitor the wellbeing of the person under guardianship unless abuse, neglect or exploitation are suspected.

If the guardian feels strongly that marriage is contrary to the individual's interests, the guardian may contact the Town Clerk and refuse permission for a marriage/civil union license. [18 V.S.A. §5142](#) states clearly that individuals under guardianship who wish to obtain a license to marry or commit to a civil union, require the written consent of the guardian. This step should be taken only after consultation with the Director of the Office of Public Guardian. The individual who wants to get married, and is being denied this right, should be notified of his/her right to contact Vermont Disability Law Project.

The primary reasons for refusing permission for a marriage are:

- (1) The individual does not understand the loss of financial benefits that will occur and is dependent on the benefits; or
- (2) Marriage is very likely to result in abuse or exploitation.

If a person or couple come into guardianship already married, the guardian should be aware that the financial eligibility rules and patient share may be calculated differently. The guardian needs

to figure out how to best implement the guardianship within the complexities of a marriage and contend with the financial complications that may arise from shared property.

Divorce

If an individual wants to dissolve a marriage or civil union, the guardian, along with the individual, should consult with the Director of the OPG and obtain legal advice from the Vermont Disability Law Project or Vermont Elder Law Project about whether to end the union by annulment or divorce. The guardian should assist the individual to complete necessary forms and seek legal counsel. Marital/couples counseling can also be considered.

Pregnancy-Mother

The guardian should assure that a woman who is pregnant receives health education, medical care, nutrition education, healthy food and a safe place to live. If she decides to continue her pregnancy, she should also receive extensive skilled training in infant care, as well as counseling about the effects of alcohol and smoking on a fetus.

If the woman decides to continue her pregnancy, and to give up her baby up for adoption, the guardian shall assure that she receives skilled legal and emotional support for this decision. The decision to relinquish a child for adoption must be made by the parent(s) and is not a decision made by the guardian.

Occasionally, a woman under guardianship who has lost custody of one or more children to the Department for Children and Families (DCF/FSD) because of abuse or neglect will get pregnant. In most cases, the role of the guardian will be to support the woman's choice about whether to keep or relinquish this baby and to assist her to get the supports she will need to raise this child in a safe and nurturing manner. If other team or family members disagree with the mother's decision, they may contact DCF/FSD to discuss their concerns.

When a pregnancy resulted from nonconsensual sex, the choice about continuing or terminating the pregnancy is the woman's alone. If a woman under guardianship is pregnant, and the guardian does not believe that the woman had the mental capacity to consent to sexual intercourse, the guardian should make a report to Adult Protective Services. [Make a Report with Adult Protective Services | Division of Licensing and Protection \(vermont.gov\)](#) If a woman is pregnant and the guardian believes that she did not consent to sexual intercourse and believes that she is incapable of deciding whether or not to continue the pregnancy, the matter should be discussed with the guardian's supervisor/Director and reviewed by the Department's Ethics Committee on an emergency basis. **See Part Seven: OPG Authority, Duties & Responsibilities, In-Depth Topics Within Each Power/ In-Depth Topics within Each Power/ Power of Medical/Dental/ The DAIL Ethics Committee** for guidelines related to an emergency meeting.

The decision whether to continue or terminate a pregnancy belongs to the woman who is pregnant. The role of the guardian is to assure that she receives skilled, objective counseling about her choices at the earliest possible point in her pregnancy. This should include early counseling about the effects upon the fetus of any medications she may be taking and the health

effects of stopping the medication. It is also up to the woman who is pregnant to decide whether she wants to tell the person she thinks is the father about her pregnancy. If she wants to notify/include the father, information should be shared with her about the services provided by the Office of Child Support.

If the woman chooses to end her pregnancy, the guardian shall assure that she receives skilled, safe medical care and counseling as indicated, and shall give the necessary medical consents. Guardians cannot consent to the termination of pregnancy; however, they can consent to other aspects of the procedure such as the use of general anesthesia. Information about the woman's choice should be shared very sparingly in recognition that women who terminate a pregnancy generally choose not to share this information with others. The guardian should make a note of her decision and the actions of the guardian in the electronic case record. If there are any medical and emotional side effects, these may need to be shared with the woman's support staff.

A woman under guardianship should be supported to make informed decisions regarding medication and devices which regulate fertility and conception. The guardian should assure that the woman knows what birth control options are available; the method's effectiveness; the side effects; and any other benefits. In addition to preventing pregnancy, some contraceptives provide benefits such as more predictable, lighter menstrual cycles, a reduction in the risk of some cancers, a reduction of seizure activity and prevention of iron deficiency. There are instances when a health provider may recommend a contraceptive for a woman under guardianship who is not sexually active, but rather for the benefits they provide. In these instances, if the woman under guardianship is not able to make an informed decision, it is the guardian's responsibility to weigh out the risks and benefits before making a final decision.

Paternity-Father

If a man under guardianship believes he is the father of an unborn child, their guardian should support him to establish paternity. This can be done through contact with the [Office of Child Support](#) (OCS) whose roles include establishing parentage when a child is born to unmarried parents. Usually this means identifying the father, but it can sometimes mean establishing the child's legal mother.

OCS staff can help the individual to understand the legal implications of establishing parentage. If they decide to apply for services, OCS can:

- File an action to establish parentage on behalf of the individual;
- Arrange and pay for genetic testing if it's necessary; and
- Help establish an order for child and medical support.

When a child is born to a married couple, Vermont law automatically recognizes both parents as the legal parents. If the parents are not married when the child is born, the law:

- Assumes the mother is the biological (and legal) parent; but
- Does not recognize the father until parentage has been legally established.

Parentage may be established in one of two ways:

- By voluntarily acknowledging parentage. If both parents agree, this is the simplest way to establish a legal relationship between a father and child.
- By filing an action to establish parentage in Family Court. If either of you has any doubt about the father's identity, you should file an action to establish parentage in Family Court.

The individual/guardian might not want to establish parentage if the alleged parent has a history of abuse, violence, or criminal behavior. In these circumstances it may not be in the child's best interest to establish parentage. The court may consider this to be good cause for not doing so. However, in most situations, it is important to establish parentage as soon as possible after birth for emotional and financial reasons. A parent who pays support when a child is very young is more likely to continue paying support until the child is an adult. Even so, Vermont law allows parentage to be established until the child is 21. It is important to establish parentage even if the alleged father is still in school, has no income, or has no health insurance. The court may order the father to pay a very small amount of support until he finishes school or gets a job. At that time, either parent can ask the Family Court to modify the support order to reflect the change.

If parentage is determined, it is the guardian's role to help them to understand their child support responsibilities, to decide what role they wish to play in the birth of the child and in raising the child, to communicate these wishes to the mother, and to receive childbirth and infant care education.

The decision whether or not to terminate a pregnancy is the woman's alone. The putative father may express his opinion, but he has no legal right to a say in the decision.

Parenting

A guardian for an individual with a child is not the guardian for the child. The parent(s) are the guardian of the child and the one(s) to give consent for medical treatment, educational services etc. By law, the Office of Public Guardian may not serve as guardian for a minor child and cannot make decisions on behalf of the child. If a person under guardianship retains parental rights to make decisions on behalf of their child, guardianship of the parent becomes questionable, and termination should be considered.

A guardian for a parent may assist the parent to get legal advice regarding custody questions and to weigh custody choices. However, the guardian may not make a decision on behalf of a parent to keep or relinquish custody. This is a personal decision for the parent and not one granted to the guardian.

A guardian may, and should, assist a parent to access services and benefits they need to care for and nurture the child. However, the ultimate responsibility of parenting lies with the parent. The guardian should make it clear to all parties that the responsibility for the safety and well-being of the child is with the parents alone and not the guardian.

All counties in Vermont have programs and services to support parenting of children who are at risk. The primary role of the guardian is to connect the parent with those supports and services and to advocate for the supports and services to be adapted to the needs and abilities of the parent. If the guardian serves on an inter-disciplinary team that is supporting the family, the guardian must make it clear that the responsibility for the safety of the child or the adequacy of the parenting is that of the parent(s) alone.

Guardians are mandated reporters of abuse and neglect. As such, they are responsible for reporting to DCF any abuse or neglect of a child by a person for whom they are guardian. Notify your supervisor/Director if this action is taken.

A guardian may find themselves in discussions with DCF, lawyers, and the court about whether a child will be removed from a parent's custody. The role of the guardian is to advocate for the wishes and interests of the parent who is under guardianship. Any involuntary decision to remove a child from parental custody must be made by DCF/FSD or the courts. A guardian who is uncomfortable advocating for the parent's interest in a difficult situation where the interest of the parent is clearly not in the best interest of the child should consult with their supervisor.

Nevertheless, if it is clear to the guardian that the parent is likely to lose custody, the guardian may and should help the parent face reality and negotiate compromise measures, such as visitation rights, open adoption, and temporary custody. It is also the guardian's role to help the parent think, as all parents do, about what outcome will be best for the child.

Jury Duty

A person under guardianship has the same right and responsibility to perform jury duty as any other Vermont citizen. Like anyone else, a person under guardianship may be excused for medical reasons. If the guardian believes that the person under guardianship cannot understand what it means to be a juror, or cannot sustain attention long enough to participate, the guardian may ask to have the person excused on these grounds.

To request an exemption, the guardian should mail/email copies of the following documents to the Jury Administration Office: guardianship order, Commissioner's letter with the name of the current guardian and a letter outlining concerns related to the individual's ability to serve as a juror. The contact information is:

The Jury Administration Office
32 Cherry Street, Suite 350
Burlington, VT 05401-7305
Phone: 802-865-5879
Fax: 802-651-1959
Email address: jud.jury@vermont.gov

Additional documentation may be requested by the court to augment the request. The court will make a final determination of the individual's ability to serve.

Voting

In Vermont, individuals in guardianship have the same right to vote as all other adult Vermonters. The guardian should make sure that individuals understand the concept of voting, that they have the right to vote, know how to register, and know how to vote. The guardian should collaborate with the service coordinator, shared living provider, or other support staff to assure that the person has access to information regarding candidates and issues being voted upon in any given election. The guardian or a support worker may provide transportation to the polling place. If the individual needs assistance to read the choices on the ballot at the polling place, they should ask a poll worker for assistance and follow the protocol in place for each town. An individual should be advised that non-partisan education about ballot choices is available. In many instances, the use of absentee ballots may make voting more accessible, allowing for discussion of the specific issues prior to exercising the right to choose. All discussions of election related issues should be held without pre-existing biases or projected beliefs when discussing upcoming elections with a person in guardianship.

No one should be required to register or vote. A guardian should provide the individual with information about voting but cannot make a decision related to whether a person should register to vote or not. Some agencies ask the guardian to sign a form stating the individual declined or was unable to state their preference concerning voting. The guardian should not sign this form.

Individuals who are living out of state but receiving services from a Vermont provider will need to register to vote in the state in which they physically reside.

Marijuana, THC and CBD Products

OPG supports the rights of all people to make their own choices regarding their lives, liberty, and pursuit of happiness. Under Vermont law, marijuana (multiple forms including smokable and edible) is legal for both medical and recreational use. Adults in Vermont have the right to grow, possess, and use marijuana according to applicable laws. Under federal law, marijuana (multiple forms including smokable and edible) is illegal in the U.S. for both medical and recreational use. Many forms of CBD that do not contain THC are also legal in the US as an over-the-counter product. The sale of recreational products containing THC in Vermont remains prohibited under federal law.

Guardians do not have specific authority to approve or prohibit the use of marijuana by individuals under guardianship but may offer advice and recommendations to individuals about this choice. Guardian's input may be limited by other factors:

- Employers (including facilities and provider agencies) may create and enforce policies that limit or prohibit the use of marijuana (or other substances) by paid caregivers while engaged in caregiving activities, (e.g., smoking policies or drug-free workplace policies).
- Federal guidelines prohibit [Medicaid/Medicare](#) insurances to pay for physician prescribed treatments containing THC.

If the individual under guardianship chooses to use marijuana or THC/CBD products the guardian should do the following:

- Discuss such use with the person’s physicians and health care providers (including concerns about possible health issues or potential medication interactions.)
- Request that such use is documented on the person’s medical record and/or emergency fact sheet.
- Document the known use of substances (including medical marijuana, recreational marijuana, CBD, alcohol) in their electronic case notes.
- If the individual meets the qualifications outlined in [18 VSA Chapter 86](#) to become a registered user of Medical Marijuana, the guardian should discuss this situation with their supervisor/Director and/or the DDS Nurse Reviewer.

Smoking/Vaping (Individual under Guardianship)

Although a legal activity in Vermont, smoking/vaping tobacco/marijuana products are addictive and may be hazardous to one’s health. Guardians should approach the use of these products as they would any other habits which are dangerous to a person’s health, such as excessive drinking. [DDSD Health and Wellness Guidelines](#) provide additional guidance on this topic.

Individuals who choose to smoke/vape tobacco/marijuana products should discuss the potential impacts on their health with their primary care provider. Efforts to educate the person about the dangers of their choices should be ongoing. Support staff who work with the person must appreciate the difficulty of overcoming an addiction. Options such as support groups, nicotine patches, etc. should be offered and attempted periodically.

If an individual does not understand the health hazards of their choices because of a cognitive impairment, the person’s team should take the same steps they would take if the person were exposing themselves to any other high-risk activity without appreciating the risk. However, individuals who choose to smoke/vape will not be restricted by the guardian, except for the restrictions that are set by State and Federal law and consistent with DA/SSA policies.

Because second-hand smoke and vaping particles pose a danger to anyone living in a home with a smoker, particularly children, no guardian should insist that an individual be permitted to smoke/vape indoors. If smoking indoors is of paramount importance to the person, the guardian or agency should locate another residence, rather than insisting that a non-smoking household permit a person to smoke indoors. If a person is receiving DDS-funded residential living supports, they will also need to abide by the smoking policies developed by their service agency.

Smoking/Vaping (Household Members)

[DDSD Health and Wellness Guidelines](#) state that for individuals receiving DDS-funded residential living supports they “will receive services in a smoke- free environment.” Any exception to this must be documented in writing with the approval of the individual and guardian and the team. Input from the primary medical professional needs to be obtained prior to making an exception when individuals have health concerns that may be further exacerbated by smoke. Shared Living and Adult Family Care providers must abide by the smoking/vaping policy established by the service agency for whom they are employed.

In general, an individual should not reside in a setting that poses a danger of long-term exposure to second-hand smoke/vaping particles. Individual circumstances to be considered in making an exception are:

- The person's health status
- The person's ability to state whether or not they are bothered by smoke/vape
- The number of smokers and amount of smoke/vape in the home
- The significance of the relationship of the person and the home provider

Spiritual Beliefs

A guardian should support a person under guardianship to practice and express their religious beliefs. This includes having support and transportation to attend religious services and obtain pastoral counseling.

Many people have spiritual beliefs which are not defined by an organized religion, such as beliefs about after life, right and wrong, how people should treat each other and other living creatures, and what is sacred. The guardian should strive to identify and understand a person's spiritual beliefs and then to assure that the person's environment and support staff reflect and respect those beliefs. Supporting and respecting a person's religious and spiritual beliefs consists of more than just allowing a person to attend religious services. It includes identifying and respecting beliefs about diet, clothing, listening to profanity, alcohol, funeral and burial arrangements, and end of life circumstances.

A guardian may face tough choices when an individual lives with a family or in a facility, with its own strong religious beliefs and practices. The line between sharing or inviting a person to participate in religious/spiritual practices and imposing these beliefs and practices can be blurred at times. The guardian's role is to assure that the individual always has a choice: to go to church or not, to be vegetarian or not, etc.

Some End-of-Life Spirituality Resources include:

[Caring Across Cultures and Belief Systems](#) This document gives an overview of many cultural and religious groups.

[Roman Catholic](#) This document provides information about creating an Advance Directive, funeral arrangements and church doctrine related to these topics.

[Jewish](#) This document provides information about Jewish End-of-Life practices and beliefs.

[Abenaki](#) This document is not end-of-life specific. The website contains information for spiritual elders and tribal council.

[Hinduism](#) This document provides information about Hindu End-of-Life practices and beliefs.

[Muslim](#) This document provides information about Muslim End-of-Life practices and beliefs.

[Buddhism](#) This document provides information about Buddhists End-of-Life practices and beliefs.

Services for Deaf, Hard-of-Hearing, DeafBlind

DAIL employs a Director of Deaf, Hard-of-Hearing, and Deaf Blind Services to assist with accessing supports and answering specific questions. The website offers a complete listing of current resources and includes information regarding accommodations, advocacy, assistive technology, employment, education, safety, recreation and more. [Services for Deaf, Hard-of-Hearing, DeafBlind | Disabilities, Aging and Independent Living \(vermont.gov\)](#).

Individuals who are Deaf, Hard-of-Hearing, and DeafBlind must have a means of communicating with others and using their preferred communication method. There are several devices that can assist an individual with communication. Vermont Relay is a free service that enables people who are Deaf, Hard-of-Hearing, and DeafBlind or those with a speech disability to place and receive calls [Vermont Relay – Stay Connected Using Vermont Relay](#). Individuals who are Deaf, Hard-of-Hearing, and DeafBlind can choose from a wide range of relay services:

- TTY relay services, the original and now traditional relay service, which can be reached by anyone by dialing 711 from a telephone or TTY
- Voice Carry Over (VCO) for people who are deaf or hard-of-hearing who communicate by speaking
- Hearing Carry Over (HCO) for people with a speech disability who use a TTY
- Speech-to-Speech (STS) relay service for people with a speech disability who use a telephone
- Captioned Telephone Service (CTS) for people with a special “captioned telephone” that enables them to communicate by speaking, listen to what they can hear, and read what the other person is saying through captions displayed on the “captioned telephone”
- Video Relay Service (VRS), an Internet-based system for people with video conferencing equipment or videophones who communicate in American Sign Language
- Internet Protocol Relay (IP Relay) service, an Internet-based system for people with a computer or other web-enabled device who communicate using text
- Internet Protocol Captioned Telephone Service (IP CTS), an Internet-based system that enables people to communicate by speaking and listening to what they can hear over a telephone, and read what the other person is saying through captions displayed on a computer or other web-enabled device

Vermont Assistive Technology [Home Page | Assistive Technology Program \(vermont.gov\)](#) also provides try out centers statewide and loan programs to assist individuals in accessing various phones and other technology to enhance communication. Additionally, you can find vendor lists of where to purchase assistive technology at the following: [Vendor List-Deaf and Hard of Hearing for Vermont](#) or [Vendor List-DeafBlind for Vermont](#). These lists also include vendors that supply various supportive technology outside of communication such as tactile signals for smoke detectors. Individuals may also qualify for assistive safety technology by visiting [Fire Safe 802 Program | Division of Fire Safety \(vermont.gov\)](#).

The State of Vermont offers an online training, “Working with Deaf, Hard-of-Hearing, DeafBlind, and DeafPlus People.” It is available on the state’s Learning Management System. [SOV LINC | Department of Human Resources \(vermont.gov\)](#)

Addressing Emotional and Behavioral Issues

Sometimes people behave in ways that pose a risk to health and safety, or interfere with growth, development, or achievement of goals. Supporting a person to change behavior should be done in the context of a person-centered planning process that focuses on having the person live the life he or she desires. The guardian should become familiar with the procedures identified in DAIL's [Behavior Support Guidelines for Support Workers Paid with Developmental Services Funds](#) (2004) to be sure they are followed.

These guidelines are based on positive support strategies and represent a commitment to work continuously to end coercion, up to and including physical and chemical restraints. The Guidelines outline the types of interventions that support workers paid with Developmental Services (DS) funds may use to support behavior change and also the steps to follow when restriction of rights or restraints are required.

According to the Behavior Support Guidelines, an individual and their guardian must be involved in developing a plan for any of the approaches described in these Guidelines (unless the plan is court-ordered). If the individual has a guardian, the plan shall be explained to the individual, even though the individual's consent is not required. Other key members of the person's team should also be involved in developing the plan.

Plans written to carry out a court order do not require the consent of the individual or guardian. Guardian/individual consent is helpful but is not required for the implementation of court ordered restrictions. When restrictions are imposed by court order, a copy of the court order must be in the person's record.

Every effort should be made to develop a plan which all team members can agree on. However, there may be times when an agency will require a behavior support plan, restriction of rights, or plan for restraints as a condition of providing services. If the individual/guardian wishes to receive services but does not agree with a proposed plan or intervention, the plan must be in writing and must be reviewed by the Professional Review Committee. If the plan is approved by the Professional Review Committee, the individual/guardian can then decide whether they will accept services, including the plan. Except for court-ordered services, an individual can refuse services altogether.

Requests for a Different Public Guardian

Any individual under guardianship may request a change of guardian by calling, writing, or asking for an appointment with the assigned guardian's Regional Supervisor or the Director of the OPG. If the issue prompting the request cannot be resolved through a meeting with the individual, current guardian and the supervisor, the first request for a change in guardian may be granted. Upon a second request from the same individual, the OPG Director will have a further discussion with the individual and based upon the concerns, a decision will be made as to whether another guardian is indicated.

A request for a change in guardian from someone other than the individual (the individual's family member or service provider/agency) goes to the assigned guardian's Regional Supervisor or the Director of the OPG. It is possible that such a request would be granted, particularly if the

assigned guardian agrees. Prior to making a change, mediation, supervision, and/or education on the independent role of the guardian may be provided. **See Part Nine: Other Guardianship Topics and Responsibilities/ Addressing an Individual's Rights, Responsibilities, and Choices/ Requests for a Different Public Guardian.**

Individual Disagrees with a Guardian's Decision

Informal Process

If an individual disagrees with a decision of a guardian, the individual and guardian should meet to discuss the disagreement. Members of the individual's support team, Green Mountain Self Advocates, the guardian's supervisor, a friend of the individual, and/or a mediator may participate in an informal process to resolve the disagreement with the consent of the individual and guardian. Costs of mediation, if any, will be paid by DAIL.

Formal Processes

If, after an informal process, the individual still disagrees with the guardian, the guardian will assist the individual to consult with a lawyer from Vermont Legal Aid's Disability Law Project (or another lawyer if the individual has one) to discuss options for review. The choice of which option to pursue will be made by the individual and the individual's lawyer. The options include:

- (1) Formal mediation
- (2) Appeal to the Guardian's supervisor
- (3) Appeal to Family Court or the Human Services Board under [18 V.S.A. 9315](#) or appeal to the Probate Court (if the Guardian was appointed pursuant to 14 V.S.A. §3092).
- (4) A petition to modify or terminate guardianship under 18 V.S.A. §9316.

Wills

Individuals under guardianship retain the right to make wills, if they have the capacity to do that. It is not entirely clear who gets to decide the capacity question so contact your supervisor for guidance when necessary. Individuals may hire a lawyer to draft a will if they have the funds to do this. In most cases, individuals will need to contact [VT Law Help](#) for advice on how to proceed. There are forms on the website that can be used. The guardian will need to make sure signature and witness requirements are adhered to.

ABLE/STABLE Accounts

An [Able/Stable Account](#) is an investment account available to eligible individuals with disabilities who reside in the State of Vermont. STABLE Accounts are made possible by the federal Achieving a Better Life Experience ("ABLE") Act. STABLE Accounts allow individuals with disabilities to save and invest money without losing eligibility for certain public benefits programs, like Medicaid or SSI/SSDI. Earnings in the STABLE Account are not subject

to federal income tax, so long as the money is spent on “Qualified Disability Expenses.” A list of “Qualified Disability Expenses” can be found here: [Qualified Expenses - Vermont ABLE](#).

STABLE Accounts have some similar features to normal bank accounts, but they are not checking or savings accounts. STABLE Accounts are investment accounts, similar to 529 college savings accounts or 401(k) retirement accounts. When money is deposited into a STABLE Account, the money can be invested in different options that the individual or guardian chooses. Money can be withdrawn and spent when needed. A STABLE Account also allows individuals to grow their money and to save long-term for disability expenses.

Setting up a STABLE account requires an initial contribution of at least \$50. Vermonters pay a monthly fee of \$3.50 to maintain their accounts. The fee is automatically withdrawn from the account by the STABLE Fiscal Agent, SUMDAY. There is also a small asset-based fee of between 0.19% and 0.33% depending on the investment options chosen. For those instances in which the OPG opens and manages individual accounts, only the Bank Safe investment option is utilized. OPG staff do not have the general financial acumen to determine nor monitor return rates for individuals. Opening an account requires careful consideration to determine if the individual has enough resources in the account to pay these fees on an ongoing basis and manage risk associated with the different investment options. It is not recommended that accounts be opened for individuals if the anticipated savings level will be less than \$1000.

The OPG Community Financial Specialists are authorized to create, withdraw money and monitor documentation of STABLE Accounts for individuals under public guardianship and/or those for whom OPG is the representative payee. If a guardian would like to open a STABLE account for an individual, they will need to complete the [New STABLE Account Request Form](#) and email it to: ahs.dailopgreppayee@vermont.gov for processing.

All contributions for individuals utilizing their own bank accounts must be made by the OPG Community Financial Specialists. Future contributions for those without bank accounts can be made by including the individual’s social security number or STABLE account number and mailed directly to STABLE at:

STABLE
PO Box 534425
Pittsburg, PA 15253-4425

All withdrawals from the account must be made by the OPG Community Financial Specialist and meet the criteria for qualified expenses to avoid tax liability or loss of benefits. It is the guardian’s responsibility to ensure the money requested for withdrawal meets the guidelines for a qualified expense. Withdrawals for those individuals without bank accounts can be made by completing the *STABLE Withdrawal Request Form* and emailed it to: ahs.dailopgreppayee@vermont.gov for processing. Receipts can also be emailed to ahs.dailopgreppayee@vermont.gov.

In the event of the death of a beneficiary, the funds from a STABLE account can be used by their estate to repay any outstanding eligible expenses, funeral, and burial costs. If the beneficiary was

receiving Medicaid benefits, Medicaid can file a claim for a payback upon the beneficiary's death and any premiums paid as part of the Medicaid Buy-In Program can be deducted from the remaining balance. The Medicaid recovery is calculated from the date the beneficiary opened the STABLE account. If no Medicaid Recovery is required and a balance remains after final expenses are paid, the balance goes to the individual's estate.

If guardianship is terminated for any reason (other than death of an individual), the individual can complete a form to remove OPG as the authorized representative of the STABLE Account. This form must be signed by the individual. [Remove Authorized Legal Representative Form](#)

Guardianship Services (GS) Fund

The Guardian Services (GS) Fund is a relatively small amount of general fund money (\$23,637) allocated annually and distributed on a first come, first serve basis. The purpose of the GS Fund is to pay for special costs relating to personal health and safety or maintaining a residence for individuals on public guardianship. Approval from the OPG Director is required to access funds in this account. The funds should be distributed in a way that does not create a special entitlement or advantage for individuals who are on public guardianship, but instead balances the lack of natural or family support available. The fund is there to assist public guardians to carry out their responsibilities. Individuals under guardianship who have STABLE accounts or other financial resources, are not eligible to request money from the GS fund. See [GS Fund Guidelines](#) and [Request Form](#) for use of the fund.

DDSD Special Services Fund (SSF)

The Special Services Fund (SSF) is a limited fund (state general fund dollars) that will pay for adaptive equipment, dental services and special services and goods that a person or his/her family cannot afford and are not covered by other funding sources. Technical assistance and/or referral to alternative funding sources or used equipment will be provided as needed.

The person making the request may be asked to pursue other funding sources first or in combination with SSF. Alternative funding may come from Medicaid, Medicare, home and community-based services (HCBS), Flexible Family Funding, one-time funding, private insurance (e.g., dental), HireAbility, schools, other AHS departments (e.g., DCF, VDH), etc.

Who can receive funding?

People who are eligible for developmental services. Requests should ideally come from the person's Services Coordinator if they receive DD services, but anyone may apply for funding on behalf of someone else. Access to the fund is contingent upon funds available.

What will be funded?

The program is flexible as to what services it will cover and types of goods (e.g., adaptive equipment, eyeglasses). Each request is evaluated individually. There is a limit of \$500 for any

one person within a fiscal year (July 1 – June 30), except for dental for adults which has a maximum limit of \$1000 within a fiscal year.

General Guidelines for the Special Services Fund

- (1) The SSF will provide funding for goods and services, which allow for greater independence, inclusion, and access to the person's community and/or aid in the support of the person. The goods and services requested must be related to the person's disability and not be something an age-related peer might have. For example, we would not pay for a regular swing set for a 7-year-old or a computer for an adult.
- (2) In certain circumstances, clarification may be requested concerning the person's ability to benefit from the goods or services being requested.
- (3) Dental services will be paid for based on the Vermont Medicaid fee schedule for services that are over the \$1,500 Medicaid cap or are not funded by Medicaid for adults. All Medicaid eligible dental services will not be funding by the SSF when there is no cap for individuals receiving HCBS (as of 7/1/23). If the cost for non-Medicaid procedures exceeds the Medicaid rate and the maximum \$1,000 SSF, funding for the balance of the cost will need to be secured from an alternative source, primarily One-Time Funding.
- (4) Co-payments (usually \$3.00 per visit) will not be covered by the fund and must be paid by the person or their family or other source, depending on the circumstances. Some dental providers waive that fee.
- (5) The fund generally won't cover high-cost projects, such as extensive home modifications, purchasing of vans, high end adaptive equipment or orthodontic work. Referrals may be made to alternative funding (e.g., HCBS, One-Time Funding) and used equipment sources.
- (6) Payments require an invoice for services and may only be made after the service has been rendered. Payments may be made through direct billing from a vendor (W-9 required if they are not already in the State of Vermont VISION finance system, or we can reimburse a DA/SSA). Payment may also be made to the DA/SSA or directly to the person or other individual for a bill already paid (W-9 required). If payment is being shared by the DA/SSA and the SSF, it can be easier to have the agency pay for the services in full and the SSF reimburse the agency. Invoices generally take 4 weeks (net 30) to be processed and paid. Special invoice needs to be signed by the individual or agency.

Provide:

- (1) Person's name
- (2) Name and phone number of DD Services Coordinator and agency name
- (3) Name and phone number of person making request (if other than Services Coordinator)
- (4) Provider or source of the service/goods
- (5) Description of the service/goods

- (6) Estimated cost – include an itemized estimate or copy of invoice – dental estimates/ invoices must include Medicaid procedure codes

To request funding or for more information, contact:

June Bascom

(802) 585-4247

june.bascom@vermont.gov

Clients Who Pose Risks to Public Safety and/or Engage in Criminal Behavior

Sometimes people under guardianship present a risk to public safety or engage in criminal behavior. The degree and type of consequences or restriction of rights varies based on several factors: the nature of the act(s), the diagnostic label of the person, and competency to stand trial. Some people remain in the community and have no restrictions, some are placed under Act 248, while others are prosecuted and incarcerated. Additionally, it is possible for Older Vermonters who are already incarcerated to be put into guardianship. The role of the guardian in these situations also varies depending upon the person and the legal outcome.

Individual is Suspected of Abuse, Neglect, or Exploitation of Vulnerable Adult or Child

If the person for whom you are guardian is suspected of abuse, neglect or exploitation of a child or vulnerable adult, notify DCF/APS that you are the guardian and provide your contact information. Your role is to attempt to ensure that the individual does not unwittingly incriminate themselves.

In general:

- Advise (or insist) that the individual not be interviewed by the Department for Children and Families, Adult Protective Services, or the police except with a guardian and/or a lawyer present;
- Do not release any records except to the person's own attorney without permission from the Director of the OPG or the AAG;
- Do not tell what you know about the incident (even if you think the information is favorable towards the individual or clears them from fault) except if you were a direct witness. For instance, you may tell police or an investigator that you actually saw the individual assault someone.

Remember that you owe the individual the same (or greater) protection of privacy and confidentiality that an informed citizen would choose for themselves.

Arrest of Individual under Guardianship

It is important that the guardian protect the individual's rights as much as possible following an incident in which the individual has been arrested, incarcerated, or involved in other legal issues. The following guidelines should be followed after an incident:

- Advise the individual not to talk about the case with anyone unless you, the guardian, or their attorney, is present.
- Carefully consider disclosing any information to the police. Guardians should talk with their supervisor/Director prior to disclosing information. If this is not possible, the supervisor should be notified of the conversation(s) as soon as possible. **See Part Fifteen: OPG Programmatic Guidelines/ Privacy and Confidentiality.**
- Call the [Public Defender's office](#). If the individual has been assigned a public defender due to previous offenses, try to arrange a meeting prior to the court arraignment, if possible. If this is a first offense, explain the situation to the intake person and request a public defender for the individual.
- Don't allow any questioning by the police without having the individual's attorney present.
- Briefly describe the process of legal proceedings to person under guardianship.
- Go to court to formally make an [application for a Public Defender](#) and then meet with the assigned attorney. If you don't have the court documents, you can go to the court clerk's office prior to the arraignment. There is a cost associated with applying for a Public Defender based on the person's income.
- Be sure that the lawyer is aware of the person's need for a guardian, the nature of their disability, and any accommodations they may need throughout the court process.
- Go before the judge, for the initial arraignment, where a plea will be entered. At this point, the attorney might advocate for a competency evaluation.

Usually, people go home with Conditions of Release that they are expected to abide by. Examples of Conditions of Release are: no contact with the victim; no alcohol use; or a curfew. Talk with the person and other team members about the conditions, and clarify, if necessary.

At a later court date, a determination of competent and guilt will be determined. Possible outcomes could include: fines, community service, probation, commitment to Act 248, or for first time offenders, Court Diversion. If the individual receives Court Diversion, the guardian should attend and work with the Diversion Board.

Individuals on Act 248 and the Guardian's Role

Act 248 is Vermont's civil commitment law for people with intellectual disabilities who have been found to be a danger to the community and who cannot be sent to prison because they are found not competent to stand trial. Act 248 provides a way for courts to protect public safety by committing individuals found incompetent to community programs, which have the legal responsibility to protect public safety. Judicial proceedings for commitment to ACT 248 are outlined in [18 V.S.A. Chapter 206](#). (Please note that people with a diagnosis of Autism who do not also have a diagnosis of Intellectual Disability are not eligible for Act 248.)

To be committed under Act 248, a person must be a person in need of custody, care and habilitation defined as:

- A person with an intellectual disability, which means significantly subaverage intellectual functioning existing concurrently with deficits in adaptive behavior that were manifested before 18 years of age; or
- a person with a traumatic brain injury:
- who presents a danger of harm to others, defined as a person who has engaged in any of the following: sexual assault, lewd and lascivious conduct with a child, inflicting or attempting to inflict serious bodily injury upon another person, and:
- for whom appropriate custody, care, and habilitation can be provided by the Commissioner in a designated program.

People can be placed under Act 248 only if they have committed one of the offenses listed as a “danger of harm to others.” For example, a person who has committed arson or stolen a car cannot be put under Act 248 unless there was some element to the crime that involved inflicting serious bodily injury.

DAIL’s AAG handles the Act 248 legal proceedings against the person, which can be confusing for public guardians who are accustomed to the AAG being OPG’s legal representative. If there are questions about the status or process of Act 248 proceedings, it is appropriate to ask the AAG in their role as OPG’s legal representative, to discuss or explain what is happening.

If the court finds that the individual is a person in need of custody, care and habilitation, it shall order the person committed to the custody of the Commissioner of DAIL for placement in a designated program in the least restrictive environment consistent with the individual’s need for custody, care and habilitation for an indefinite or limited period. At this point, the Developmental Disabilities Services Division (DDSD) is responsible for designating an agency to provide care, custody and habilitation to the person. DDSD generally selects the designated agency (DA) in the county where the person lives but may select a different agency if it is better suited to provide the necessary services. DDSD might also select another agency in order to provide a safe distance from the victim or because of intense community hostility. The DD Public Safety Specialist serves as the Commissioner’s representative and provides monitoring and oversight to ensure that the court order is carried out. More information about Act 248 and the role of the DD Public Safety Specialist is available here [ACT 248-Public Safety Program](#).

Most Act 248 court orders include:

- an order to participate in treatment.
- an order to live where their treatment team decides.
- authorization for DAIL and/or the designated agency to make disclosures as necessary to protect public safety.
- authorization for DAIL to search the person’s room or residence.
- an order not to possess any weapons.

Court orders may include conditions specific to the individual, such as:

- an order to have no contact with the victim.
- an order to abstain from going to a particular town.

A person under Act 248 is in the custody of the Commissioner of DAIL. Being in the custody of the Commissioner of DAIL is not the same as being in the guardianship of the Commissioner of DAIL. When a person is under public guardianship and Act 248, the Commissioner of DAIL is serving two different roles at the same time regarding that person. This can be confusing for the person and the guardian. The guardian still has authority in the remaining areas of guardianship not superseded by Act 248. An Act 248 custody order gives the Commissioner of DAIL (serving in a different role) the authority to make decisions that affect public safety and the person's treatment for the offense, but the Act 248 order does not grant authority to make decisions in areas unrelated to treatment and safety, such as medical care or contractual matters. The guardian should consult with their supervisor and the AAG to explore termination or modification of the guardianship order, given that the custody of DAIL may render the guardianship ineffective or unnecessary.

When a person under guardianship is also under Act 248, the guardian should collaborate with the DD Public Safety Specialist and outline a plan for who is responsible for decision making in specific aspects of the person's life, and how communication between them will occur. If conflicts or disagreements arise with the DD Public Safety Specialist, the guardian should consult with their supervisor.

Individuals in the Custody of Department of Mental Health (DMH) on Orders of Non-Hospitalization (ONH) and the Guardian's Role

An ONH is a court order that contains conditions by which a person must abide or face the possibility of hospitalization or re-hospitalization. An ONH places an individual in the custody of the Commissioner of DMH. It names a DA/SSA, which has been delegated by the Commissioner, to provide the necessary supports and treatment to the individual and to monitor adherence to the ONH conditions. The goal of an ONH is provide structure around treatment engagement.

An ONH can be issued in Family or Criminal Court either by stipulation or after an evidentiary hearing. An ONH may be issued upon a person's discharge from an involuntary psychiatric hospitalization. It can also come through Criminal Court, serving as a resolution of legal charges, and direct a person to enter or remain in community-based treatment in the custody of the Commissioner of DMH. An initial ONH is issued for 90 days and can then be renewed for up to a maximum of one year at a time. If the individual is not following the conditions of the ONH and is clinically assessed as needing inpatient hospitalization, the DA/SSA can seek to revoke the ONH, which occurs through a court process and judicial ruling.

Terms and conditions of an ONH vary depending on individual treatment needs. Standard ONH conditions are:

- (1) Respondent shall take all medication as prescribed by their treating psychiatrist or other prescribing treatment provider at [DA/SSA], including in front of staff if requested;
- (2) Respondent shall keep all appointments made by or with their case manager, psychiatrist, or other treatment providers at [DA/SSA];
- (3) Respondent shall follow the treatment plan as developed by [DA/SSA];
- (4) Respondent shall not engage in behavior that poses a threat or danger to self or others; and
- (5) Respondent shall reside in housing approved by [DA/SSA].

If an individual under guardianship is placed in the custody of the DMH, in short, custody trumps guardianship. That is, any specific condition stated in a ONH supersedes the authority of a guardian. For example, if the ONH states that the person shall reside in housing approved by the DA/SSA, the guardian cannot just move the person to another residential setting. Most decisions that are related to the person's habilitation, supervision, and treatment are made by the DA/SSA delegated by the Commissioner for a person under an ONH. The guardian still has authority in the remaining areas of guardianship not superseded by their ONH. For example, if a person wants to purchase a cell phone and enter into a contract with the cell phone carrier, the guardian needs to review, approve, and sign the contract. The guardian should consult with their supervisor and the AAG to explore termination or modification of the guardianship order, given that the ONH may render the guardianship ineffective or unnecessary.

Individuals in the Custody of Department of Corrections (DOC) and the Guardian's Role

Individuals who are found competent to stand trial and are convicted of a criminal offense(s) are then sentenced. More serious crimes can result in incarcerative sentences, while other may result in community supervision. If an individual under guardianship is placed in custody of the DOC, in short, custody trumps guardianship. That is, any specific condition stated in a DOC court order supersedes the authority of a guardian. For example, if a court order states that a person must live in Washington County, the guardian cannot move the person to another county. Most decisions that are related to the person's habilitation, supervision, and treatment are made by DOC for people under their custody. The guardian still has authority in the remaining areas of guardianship not superseded by their DOC custody order. For example, a doctor at a Correctional Facility may recommend a psychotropic drug to help a person control their anxiety. The guardian must determine that the potential benefits of the medicine outweigh the risks and consent to the administration of such a medicine. The guardian should consult with their supervisor and the AAG to explore termination or modification of the guardianship order, given that the custody of DOC may render the guardianship ineffective or unnecessary.

When a person under guardianship is incarcerated, the guardian should reach out to the person's assigned DOC Caseworker to introduce themselves and provide them with a copy of the guardianship order. The guardian should have at least monthly contact with the DOC Caseworker via email/phone to find out how the person is doing and visit the person at the DOC Facility at least once every quarter. A guardian can use the VT DOC Offender Locator to

determine which correctional facility the person is housed in and who is their assigned DOC Caseworker [Vermont DOC \(public-safety-cloud.com\)](http://public-safety-cloud.com).

When a person under guardianship is under DOC Community Supervision (ie. furlough, parole, or probation) the guardian should reach out to the person's assigned DOC Community Corrections Specialist to introduce themselves and provide them with a copy of the Guardianship Order. The guardian should request a copy of the person's DOC community supervision conditions. The guardian should attend at least bi-annually meetings with the person and their DOC Community Corrections Specialist to ensure the guardian is clear on the person's DOC community supervision conditions.

Problematic Sexual Behaviors

To be an effective guardian for an individual with problematic sexual behaviors, the guardian must develop knowledge about best practices in the assessment, treatment, and risk management with individuals with DD and Problematic Sexual Behaviors (PSB). The VT Best Practices Manual can be found here: [Best Practices Manual Assessment, Treatment, and Risk Management with Individuals with Developmental Disabilities and Problematic Sexual Behaviors](#). The guardian must have a solid understanding of the individual's risk of reoffending. Thus, the guardian should solicit assistance from the DD Public Safety Specialist and attend the Sex Offender Discussion Group to learn about best practices in evaluating and treating individual risk.

Part Ten: Guardianship Modification

Modification or Termination of Guardianship

There are several scenarios under which an individual or circumstance may warrant modification or termination of guardianship.

An individual under guardianship displays the ability to make decisions for themselves or with assistance from a Supported Decision-Making Plan. The guardian will work together with the individual to provide input for an annual review recommending termination of guardianship or modification of the powers of guardianship and will assist with creation of a Supported Decision-Making Plan, if appropriate. The AAG will initiate the petition upon completion of the annual review recommending termination or modification of the guardianship order and file with the appropriate court.

Alternately, the person may wish to contact the Disability Law Project and request help filing the request themselves. [Disability Law Project | Vermont Legal Aid \(vtlegalaid.org\)](http://vtlegalaid.org) The guardian will inform the DLP that OPG is in support of the individual's desire to change their guardianship status. DLP may assist the individual to petition the court for modification or termination of guardianship or may request that DAIL's AAG file the petition.

An individual may believe that they no longer need a guardian despite the guardian and service providers believing that is not the case. The guardian should discuss this request with their supervisor and/or Director, as well as the AAG. The guardian should then refer the individual to the DLP to make an appointment for a private meeting. A staff person from the DLP may reach out to the guardian to gather more information prior to deciding next steps. DLP will assist the individual to petition the court to modify or terminate the guardianship if the individual and their attorney decide to move forward. When this happens, most often the judge requests an evaluation and subsequent hearing to determine whether the individual remains in need of a guardian.

An appropriate family member or friend may be willing to become the guardian. The guardian should notify their supervisor and the Director when an alternative guardian is being proposed and assistance will be sought from the AAG.

An individual actively resists the assistance of a guardian, and the guardianship does not benefit the person. In some situations, people have sufficient ability to act on their own decisions and refuse to cooperate with decisions and recommendations made by the guardian. Since the guardian has no authority to compel the person to do or stop doing anything, guardianship becomes ineffective and leaves OPG responsible for the person's wellbeing but unable to ensure the person's safety. The guardian should discuss with the supervisor, Director and AAG to plot a course of action to have the guardianship terminated.

Death of a Person Under Guardianship

Title 18 Guardianship technically ceases upon the death of the person. In reality, the guardian is often the person who becomes responsible for making final arrangements, paying final funeral expenses and medical bills and disposing of personal property, especially if there is no family or minimal family involvement. Ideally, burial or cremation plans would have been discussed with the person or the person's family far in advance of the need. Payment also could have been prearranged either by the person or their family prior to the establishment of the guardianship or by the guardian as allowed by state law. **See Part Seven: OPG Authority, Duties & Responsibilities, In-Depth Topics Within Each Power/ In-Depth Topics within Each Power/ Power to Exercise General Financial Supervision Over the Income and Resources of the Person-Title 14 Only/ Pre-Need Burial Arrangements.**

[14 V.S.A §3077](#) authorizes guardianship for individuals under Title 14 for up to two years after the date of death. In addition to managing funeral arrangements, payments and the disposition of personal affects, the guardian must prepare and file with the court a final report and accounting of the individual's estate. Title 14 guardians are not officially discharged from their duties until all legal requirements are met and the Probate court orders the guardianship terminated.

Death of an Individual (Expected)

The following steps should be followed:

- If the person was in Developmental Disability Services or Adult Family Care, the agency must complete a Critical Incident Report.
- Notify the Director of OPG and Administrative Services Coordinator via email or phone within 24 hours.
- Contact the designated funeral director for removal of the individual's body. In the case of an expected death, the guardian/family should have contacted the funeral home prior to the death of the individual to discuss burial arrangements. If burial arrangements are not in place, provide the funeral director with contact information for the guardian/family and follow up as soon as possible.
- Notify family members and discuss their wishes for final arrangements if these were not in place. The wishes of the family supersede the guardian's wishes as described in [VSA 18 5227](#) within the limits of available financial resources. In some cases, family members manage the details of the final arrangements themselves, in other cases they do not.
- [18 V.S.A. §5227](#) also states that the family (or the individual prior to death) may decide to have their body/organs donated for medical/scientific research purposes. Public guardians are not allowed to make this decision independently.
- The Representative Payee needs to be notified within 48 hours of the date of death. Social Security and VT Department of Health Access must be notified by the Representative Payee or guardian.
- Obtain copy (or copies) of the certified death certificate from the funeral director.
- Title 18: Representative payees may access individual's remaining personal or STABLE funds to pay for final burial arrangements and medical bills. After all bills are paid, determine if excess funds can be sent to Unclaimed Property.
- Title 14: Notify Probate Court of the death of the individual as soon as possible. Provide the court with a copy of the Death Certificate as soon as it is available.
- Title 14: Guardian may access individual's funds to pay for final burial arrangements, medical and housing bills. A [Closing Account and Discharge Order Form](#) in addition to a [Final Summary of Account](#) will need to be submitted to the court once all financial and personal matters are settled and to officially close the guardianship case.
- Place case note about the death in the electronic record.

Death of an Individual (Unexpected)

The following steps should be followed:

- Notify Director of OPG immediately to report the death and determine if an autopsy is warranted due to the nature of an untimely or suspicious death.
- Someone generally calls 911 to report the apparent death, resulting in rescue squad and police response. If the person is declared dead, the police may involve the Medical Examiner who will determine if an autopsy is required. The guardian can request an autopsy, but the Medical Examiner may decide otherwise. The opinion of next of kin may be more important than the guardian when making this decision. The guardian should contact the Director or DDS Nurse Reviewer for assistance with Medical Examiner's office if necessary.

- The service provider, nursing home or guardian needs to file a report with Adult Protective Services (APS) if the situation warrants this action. [Make a Report with Adult Protective Services | Division of Licensing and Protection \(vermont.gov\)](#) If an APS report is filed by someone else, the guardian should notify APS that they are the guardian and provide contact information.
- Follow all steps outlined in the section above after initial actions have been taken.
- Ensure that case notes are thorough and up to date as they may be part of any investigation by APS, police, or Medicaid Fraud and Residential Abuse Unit (MFRSU).

Additional Resources for Payment of Funeral Expenses

Determine if pre-arranged funeral plans have been made and follow through with them to the extent possible. The service coordinator/social worker/family may also help with this step. Some pre-need burial plans may not be paid in full at the time of death so decisions will have to be made to fully fund the plan or cut costs, if necessary. Family should be consulted and may have the ability to assist with the cost. Additional financial resources are listed below.

If the individual did not make final arrangements prior to guardianship, the guardian should attempt to determine the individual's preferences regarding final disposition, funeral services, and burial. This may have been accomplished by consulting with the individual, the individual's family and friends, or clergy prior to or after death. The individual's financial status will have an impact on this decision due to the availability of funds left in their personal and/or STABLE accounts upon death. The Department of Children and Families does provide monetary assistance to pay a portion of the cost if needed. The maximum amount available is \$1100.00 and covers the cost of cremation only. Contact the local district DCF office for assistance to request funds. [ESD District Offices | Department for Children and Families \(vermont.gov\)](#)

STABLE account funds should be utilized by the individual's estate to repay any outstanding eligible funeral and burial costs that are not covered by other personal or family resources. **See Part Nine: Other Guardianship Topics and Responsibilities/ Addressing an Individual's Rights, Responsibilities, and Choices/ ABLE/STABLE Accounts.**

The [Guardianship Service Fund \(GSS\)](#) may be accessed for up to \$500 to help offset the cost of burial arrangements for any individual served by OPG. Individuals who have STABLE accounts are not eligible for money from the GSS fund. Prior approval is required by the Director of OPG. Payment is sent directly to the vendors of the service (i.e., funeral home, cemetery marker). The Administrative Services Coordinator can facilitate the invoice process.

Individuals who resided at the Brandon Training School (BTS) at any point in their life are entitled to a no cost burial plot at the Pine Hill Cemetery in Brandon, VT if necessary/desired. Family or guardian can contact the Director of Miller and Ketcham Funeral Home at 26 Franklin St. Brandon, VT for more information [Miller & Ketcham Funeral Homes, Inc. | Brandon VT funeral home and cremation \(millerandketchamfuneralhome.com\)](#)

Part Eleven: OPG Representative Payee Services

Limited Representative Payee services are available for individuals under public guardianship or as an alternative to guardianship.

The Community Financial Specialists are the representative payees for OPG and are responsible for managing the Social Security (SS, SSDI, SSI) benefits, VA benefits, Pension, Railroad benefits and 3SquaresVT benefits of some individuals under public guardianship and others who are not. This support requires managing monthly deposits and payments for various areas of need (housing, food, medical, personal items). This position is also responsible for reporting back to the SSA/VA, assisting with public benefit applications/reviews, and collaborating with the SSA around issues that arise such as overpayments. More details about the role of being a payee can be found at [Social Security - Guide for Organizational Representative Payees - Table of Contents \(ssa.gov\)](#).

Guardians should be aware of the following when working with the CFS:

- If possible, Rep Payee services should be sought elsewhere due to the large number of individuals served by OPG's Community Financial Specialists.
- The [Application for Payee form](#) needs to be completed in full when requesting the services provided by the CFS. It may take up to 60 days for the CFS to receive approval from the SSA and have the individual's funds deposited in the account.
- The CFS utilizes a collective account with TD Bank. They manage all funds through the RPM software system, which guardians can have view only privileges.
- The CFS is able to manage the following income: SS, SSI, SSDI, 3SquaresVT, VA, Railroad and pension benefits. Income is deposited on the 1st or 3rd of the month and monthly checks are issued in the same time period.
- The CFS can issue checks daily as issues arise.
- To request a check, complete the [check request form](#) and email it to the CFS. Checks are usually issued within a day or two. If it is emergent, please make the CFS aware.
- There is currently no ability to issue electronic payments, so everything is by check.
- The CFS is very busy the last week of the month through the 3rd of the following month. They may have delayed responses to inquiries during this time period.
- Please respond to deadlines the CFS sets in reviewing monthly reports. This is needed to confirm accuracy of information so checks can be sent on time and to the correct individuals.
- A person who receives Medicaid benefits must keep their account balance under \$2000/month. Guardians need to review monthly balance reports and determine any needs for expenditures with the individual and team to ensure they remain Medicaid eligible.
- The CFS needs documentation (receipts) for all checks they issue. The guardian should work collaboratively with the team to determine who is responsible to send this information to the CFS.
- The guardian should notify the CFS if there is a change in contact information, living arrangement, or employment and/or income from other sources. This must be reported by the CFS to the SSA immediately to ensure accuracy of the individual's benefit.

- Guardians should ensure taxes are filed for individuals they support. The CFS can supply the SSA tax documentation to whomever is assisting with this process.
- The guardian needs to notify the CFS if guardianship is terminated and why. The CFS may remain working with the individual or there may be times they discontinue services.
- If an individual passes away the guardian should notify the CFS so they can contact inform the SSA.

Part Twelve: Understanding Government Benefits

Social Security Administration (SSA)

The United States Social Security Administration (SSA) is an [independent agency](#) of the [U.S. federal government](#) that administers [Social Security](#), a [social insurance](#) program consisting of [retirement](#), [disability](#) and survivor benefits. To qualify for most of these benefits, most workers pay [Social Security taxes](#) on their earnings and the claimant's benefits are based on the wage earner's contributions. Otherwise benefits such as Supplemental Security Income (SSI) are given based on need.

The [Social Security Administration Handbook](#) is a good reference for questions related to all aspects of eligibility, income, reporting requirements, etc.

Retirement, Survivors, Disability Insurance (RSDI)

The SSA administers the retirement, survivors, and disabled social insurance programs, which can provide monthly benefits to aged or disabled workers, their spouses and children, and to the survivors of insured workers. The programs are primarily financed by taxes which employers, employees, and the self-insured pay annually. These revenues are placed into a special [trust fund](#). These programs are collectively known as [Retirement, Survivors, Disability Insurance](#) (RSDI).

Supplemental Security Income (SSI)

The SSA also administers the Supplemental Security Income (SSI) program, which is needs-based, for the aged, blind, or disabled. Because SSI is needs-based, eligibility is restricted to persons with limited income and resources. In addition, eligibility is generally restricted to U.S. citizens, nationals, and some other groups (such as some refugees) who reside in one of the 50 U.S. states, the District of Columbia, or the Northern Mariana Islands. In some cases, individuals may be eligible for Social Security (RSDI) benefits and SSI benefits. For example, a disabled individual who worked in Social Security-covered employment and who has limited income and resources may receive a Social Security disability benefit (due to employment prior to disability) and a partial SSI benefit (due to limited income and resources). The SSA refers to these beneficiaries as "concurrent" beneficiaries.

SSI is for people who are 65 or older, as well as for blind or disabled people of any age, including children. To qualify, a person also must have little or no income and few resources. This means that the value of the things you own must be less than \$2,000 if you are single or less

than \$3,000 if you are married. The value of your home does not count if you live in it. Usually, the value of your car does not count. The value of certain other resources, such as a burial plot, burial marker and/or pre-need cremation/burial plan should not count either if the total cost of expenditures does not exceed \$10,000.

To receive SSI, one also must apply for any other cash benefits for which the person may be eligible.

The State of Vermont adds money to the federal payment. The single payment one gets in the beginning of each month includes both the federal SSI payment and the supplement from Vermont. Refer to the following publication for more information. [SSA.gov/pubs Supplemental Security Income \(SSI\) in Vermont](https://www.ssa.gov/pubs/Supplemental_Security_Income_(SSI)_in_Vermont)

Wage Reporting Requirements for Individuals who Receive SSI

Any individual who works and receives SSI benefits, must report their wages to Social Security on a monthly basis. Failure to do this can result in an overpayment of funds that will need to be paid back. Wages should be reported within the first 15 days of each month to avoid incorrect SSI payments. The guardian should verify that the individual, the representative payee or an agency support person is submitting this information on a timely basis. In addition, the SSA needs to be notified as soon as possible when an individual stops working for any reason. Delayed notification of a change in the person's employment status may result in an underpayment or overpayment for the individual that will need to be rectified with the SSA.

Social Security Disability Income (SSDI)

Social Security Disability Insurance (SSDI) is a federally run benefits program that provides aid to people who are unable to achieve gainful employment due to a permanent disabling condition.

SSDI is financed by the Social Security tax. Therefore, any person that qualifies as disabled according to the definition provided by the SSA, and who has paid Social Security taxes long enough to achieve sufficient work credits, can qualify for SSDI.

In order to qualify for SSDI, an individual must suffer from a permanent condition that prevents him or her from working. Refer to the link for more information [SSA.gov Disability Benefits](https://www.ssa.gov/DisabilityBenefits).

The disability must have lasted, or be expected to last, a minimum of twelve months and one must be unable to earn an income greater than \$1410 per month (2023 allowance). In addition, an individual must have earned sufficient work credits in order to qualify for SSDI. The normal requirement is a total of 40 credits, 20 of which must have been earned in the 10 years prior to the onset of disability. Usually, this means that a person must have a fairly consistent work history and have worked (and paid Social Security taxes) for a combined five of the ten years prior to becoming disabled. These work requirements can be somewhat less for younger individuals, as parents' work credits can be applied to applicants under the age of 22.

Individuals may also qualify for SSDI payments based on a parental work record once their parent retires, becomes disabled or dies. Some payments are automatic if the parent listed their adult disabled child as a beneficiary. Often a parent does not list an adult disabled child as a dependent. If the guardian becomes aware of the death or retirement of an individual's parent, they should contact the Representative Payee with identifying information about the parent (birth date, date of death, state of residency and social security number if known) and request that this information be submitted to the SSA.

Individuals who work and receive SSDI payments **only** are also obligated to report their income to social security when requested. Individuals maintain eligibility as long as their gross monthly wages are below the SGA (Substantial Gainful Activity) threshold. This amount changes from year to year and is different for someone who is blind or low vision. Refer to the SSA publications for more information. [SSA.gov Substantial Gainful Activity \(SGA\)](#)
[SSA.gov If You are Blind or Have Low Vision](#)

Impairment Related Work Expenses ([IRWE](#))

IRWE are costs for items or services that you need in order to work because of your disability. Social Security will deduct the costs of an IRWE from your countable income when determining your eligibility for SSI or SSDI benefits. IRWE eligible services cover the cost of structural or operational modifications to your vehicle that you need to travel to work, even if you also use the vehicle for non-work purposes or the cost of driver assistance, taxicabs, paratransit, special bus, or other types of transportation you need because of your disability rather than the lack of public transportation. Mileage expenses are reimbursed at a rate determined by the SSA for an approved vehicle/driver and limited to travel to and from work. Individuals who receive employment assistance through a service agency should be supported to access this benefit by the employment coordinator or service coordinator. More information can be found at [SSA.gov/pubs Red Book-A Summary Guide to Employment Supports](#).

Guardians may need to share this information with service agencies who are not well-versed in employment supports.

Social Security, Earned Income and Income Taxes

The individual is responsible for the annual filing of taxable earned income to the IRS if it meets the minimum income guidelines of the IRS. Guardians do not generally prepare tax returns for clients but may need to check on the plan for their completion. In some situations, the individual themselves may be able to facilitate this, while other times the team members may assist. Any tax documents from the SSA will be sent to the representative payee. The Guardian may need to direct the payee as to who/where these should be sent to facilitate this process. It should be noted that individuals receiving SSI do not get any tax documents from the SSA. Any individuals who are working should also have their W2 collected from their employer and/or employment coordinator in preparation for filing taxes.

Representative Payee

For some individuals, money management is challenging. In order to assist the individual to manage their Social Security funds, a representative payee can be appointed. A representative payee is an individual or organization appointed by the Social Security Administration to receive Social Security and/or SSI benefits for someone who cannot manage or direct someone else to manage his or her money. The main responsibilities of a representative payee are to use the benefits to pay for the current and foreseeable needs of the beneficiary and properly save any benefits not needed to meet current needs. A payee must also keep records of expenses. When the SSA requests a report, a payee must provide an accounting to the SSA of how benefits were used or saved. Generally speaking, a representative payee's authority is limited to receiving and managing benefits from the SSA. More information can be found at [SSA.gov/payee/](https://www.ssa.gov/payee/)

OPG employs two Community Financial Specialists who are the representative payees for OPG. They should only be accessed if there are no other reasonable representative payee options available. **See Part Two: Office of Public Guardian Statutes, Overview and Roles of Specific Positions/ Position Specific Roles and Responsibilities Within OPG / Community Financial Specialists.**

NOTE: Having power of attorney, being an authorized representative or having a joint bank account with the beneficiary is not the same thing as being a representative payee. These arrangements do not give legal authority to negotiate and manage a beneficiary's Social Security and/or SSI payments. In order to be a representative payee, a person or organization must apply for and be appointed by the SSA.

Room & Board or Patient's Share Rates

Room and Board and/or Patient's Share payments are made from an individual's monthly income. Room and Board covers food, bedroom and use of common living spaces, basic utilities, and laundry. In nursing homes and other facilities, the Patient's Share covers additional care needs that the individual may have based on their medical condition or disability. In nursing homes, Patient's Share includes room and board, but in other facilities there may be two separate payments, room and board and Patient's Share.

The Room and Board rates are set each year by the DAIL. A memo is issued at the end of each calendar year with the room and board rates for the upcoming calendar year based on living arrangement. Providers must allocate the required minimum personal spending amount as indicated in the annual memo. Providers may choose to charge a person less for room and board so the individual may retain a greater personal need appending allowance. Providers must also give individuals proper notice of any change in room and board charges according to applicable licensing regulations and program standards. The current room and board memo can be found here: [DDSD - 2023 Room and Board Standards](#)

Below is a clarification of expenses that are included in Room and Board for people served by Developmental Services, Choices for Care and the Brain Injury Program in Licensed Level III Homes, Shared Living and Adult Family Care Homes. Included in Room and Board:

- Person's bedroom and use of common living spaces and utilities within the home. No other individuals may use the person's bedroom when the person is away. Basic utilities

include electricity, heat, water, sewer, trash removal, snow removal and 24-hour access to make and receive calls.

- Food with exceptions being purchases made in the community, such as restaurant meals and/or beverages that have been arranged per the person's request.
- Snack foods in the home, even if specific to the person.
- Laundry, laundry supplies, cleaning supplies, toothpaste, shampoo, soap, toilet paper, feminine hygiene products etc. If laundry facilities outside the home need to be utilized, this is a room and board cost.

Additional Notes:

- People in shared living/AFC homes should not be receiving economic services benefits related to food and shelter such as home delivered meal (meals on wheels), 3SquaresVT/EBT and fuel assistance.
- Personal Needs Allowance cannot be used for the following items:
 - Basic transportation to the community and medical appointments is an expectation of a shared living contract. Exceptions to this standard can be made for individuals who work. Reimbursement for work related expenses, including transportation, can be submitted to SSA through the [SSA Impairment Related Work Expenses](#) program. **See IRWE section above for more information.**
 - Personal care items. On-going personal care items such as latex or vinyl gloves, wipes, or first aid supplies are the responsibility of the shared living provider.

Any exceptions or concerns should be discussed and agreed to by the guardian in advance.

Center for Medicaid and Medicare Services Medicare (CMS)

The Centers for Medicare and Medicaid Services (CMS) provides health coverage to more than 100 million people through Medicare, Medicaid, the Children's Health Insurance Program, and the Health Insurance Marketplace.

Medicare and It's Parts

Medicare is a federally funded health insurance program for:

- people aged 65 or older,
- people under age 65 with certain disabilities, and
- people of all ages with End-Stage Renal Disease (permanent kidney failure requiring dialysis or a kidney transplant).

People under 65 who have received disability benefits from Social Security for over 24 months (SSDI) and people turning 65 who have received Social Security benefits for at least 4 months are automatically enrolled in Medicare, Part A and B. People turning 65 who do not receive Social Security benefits have to apply for Medicare. This can be done online or by calling the local Social Security office [Boston Region Home Page \(ssa.gov\)](#) Consult the individual's

representative payee (if there is one) to avoid duplication of the application process. More information and an online application can be found at [SSA.gov - Medicare Benefits](https://www.ssa.gov/Medicare/benefits).

Medicare has four components:

Part A Hospital Insurance - Most people don't pay a premium for Part A because they or a spouse already paid for it through their payroll taxes while working. Medicare Part A (Hospital Insurance) helps cover inpatient care in hospitals, including critical access hospitals, and skilled nursing facilities (not custodial or long-term care). It also helps cover hospice care and some home health care. Beneficiaries must meet certain conditions to get these benefits.

Part B Medical Insurance - Most people pay a monthly premium for Part B. Medicare Part B (Medical Insurance) helps cover doctors' services and outpatient care. It also covers some other medical services that Part A doesn't cover, such as some of the services of physical and occupational therapists, and some home health care. Part B helps pay for these covered services and supplies when they are medically necessary.

Part C – Medicare Advantage (MA)-Approved private insurance companies that provide all Part A and Part B services and may provide prescription drug coverage and other supplemental benefits. These plans usually have a lower monthly premium, but a higher co-pay when utilized. Individuals under guardianship who are enrolled in Part C plans can deduct the cost of premiums/co-pays when applying for LTCM. This will help to reduce the patient share of the payment for their living arrangement.

Part D Prescription Drug Coverage-Most people will pay a monthly premium for this coverage. Since January 1, 2006, everyone who is eligible for Medicare is also eligible for Medicare prescription drug coverage. This coverage helps lower prescription drug costs and helps protect against higher costs in the future. Medicare Prescription Drug Coverage is insurance. Private companies provide the coverage. Beneficiaries choose the drug plan and pay a monthly premium. The plan can be changed during the open enrollment period every year (Oct. 15th- Dec. 7th). **See information below about changing plans for Dually Eligible individuals.** This is important to consider as each drug formulary changes each year, so drugs that were covered one year may not be covered the next. Like other insurance, if a beneficiary decides not to enroll in a drug plan when they are first eligible, they may pay a penalty if they choose to join later.

State Health Insurance Program (SHIP)

The State Health Insurance Program (SHIP) provides information, assistance and support to Medicare beneficiaries who need help selecting or managing public and/or private health insurance benefits. [State Health Insurance Program | Adult Services Division \(vermont.gov\)](https://www.vermont.gov/health/ship) Contact the local Area Agency on Aging (AAA) for assistance. [VT Association of Area Agencies on Aging](https://www.vermont.gov/aging/vtaaa).

Dual Eligibility-Medicare and Medicaid

In some cases, Vermonters enrolled in Medicare may also be eligible for Medicaid (dual eligibility). It covers most health care services such as doctor visits, hospital care, prescription medicines, vision, and dental care, long-term care, physical therapy and more. Medicaid fees may include co-payments for outpatient visits, prescription medicines, and dentist visits. Those under age 21, pregnant women or women in the 60-day post-pregnancy period and people in nursing facilities never have to pay co-payments. [Dual Eligibility](#) is further explained including categories, benefits and qualifications by CMS.

In such cases, Medicare is considered to be the primary insurance and Medicaid the supplemental. Individuals who meet income guidelines and are enrolled in Medicare Part D coverage may also qualify for the VPharm program administered by Green Mountain Care in Vermont. Medicare offers several plans with no cost premiums and very low co-pay amounts. See [DVHA vermont.gov - Prescription Assistance](#) for more information.

Plans must be researched on the Medicare.gov website to determine what drugs are covered in each plan to meet the needs of each individual. Dually eligible individuals are able to change drug plans at any time throughout the year if necessary. This is important to monitor as each drug formulary changes each year, so drugs that were covered one year may not be covered the next. Changes can be made directly on the [Medicare.gov/plan-compare](#) website. The guardian will need to create an account for the individual to access the plan information.

General information about Medicaid and Medicare, including qualifications, services covered and additional links to information, can be found at [CMS.gov - Outreach and Education/Medicare Learning Network](#).

Medicaid

Medicaid was designed to provide a government-funded health insurance plan for income-eligible people and people who are categorically eligible. The federal government (through CMS) establishes requirements for all states to follow but each state administers their own Medicaid program differently. VT Medicaid provides low-cost or free coverage for low-income children, young adults under age 21, parents, pregnant women, caretaker relatives, people who are blind or disabled and those ages 65 or older, who meet income and resource guidelines.

Vermont has a unique agreement with CMS referred to as the Global Commitment to Health 115 Demonstration Waiver, which allows the federal government to “waive” many, but not all, of the laws governing Medicaid, including eligible people and services. It also “waives” the federal funding guidelines to provide an individual with home and community-based services instead of institutional services. The federal government provides a portion of the funding and the State matches that with general funds.

The Department of Vermont Health Access (DVHA), within the State of Vermont's Agency of Human Services, is responsible for administering the Vermont Medicaid health insurance program and Vermont's state-based exchange for health insurance.

Community Medicaid

Standard health insurance and covers most healthcare such as doctor visits, hospital visits, lab tests, and prescription drugs. In Vermont there are two eligibility categories:

Medicaid for Children and Adults (MCA)-based on income not disability for people under age 65. To apply for MCA, go to the [Vermont Health Connect](#).

Medicaid for the Blind and Disabled (MABD)-for people who are 65 years of age or older, and/or who are blind or disabled.

To be eligible for this coverage an individual must:

- Be a Vermont resident;
- Meet one of the following criteria:
 - Aged - 65 years of age or over;
 - Blind; or
 - Disabled (as defined by the Social Security Administration); and
- Meet the financial criteria, including: [Eligibility Standards for Healthcare Programs](#) and [Percentage of Federal Poverty Income Guidelines](#)

How to apply:

- If newly applying for Medicaid, visit the [MABD Application Checklist](#) page for more information and ways to apply.
- If you got a letter telling you to apply for Medicaid for the Aged, Blind and Disabled (MABD), please visit the [Supplemental Information for MABD](#).

Long Term Care Medicaid (LTCM)

LTCM in Vermont helps pay for care and support for older Vermonters and people with disabilities with the highest level of need. To be eligible a person must meet both financial and clinical criteria. The Department of Vermont Health Access (DVHA) determines financial eligibility for all applicants. Clinical eligibility is defined by the division or department administering the specific program, such as DDS or ASD.

To be eligible for this coverage an individual must:

- Be a Vermont resident;
- Be at least 65 years old, at least 18 years old with a physical disability, or eligible for Medicaid under Medicaid for Children and Adults rules;
- Meet the financial criteria [AHS Health Benefit Eligibility & Enrollment](#) ; and
- Meet the clinical criteria for nursing home level of care.

How to apply:

- Person, service provider, nursing home, Area Agency on Aging, hospital, or guardian completes the 202LTC application form:

- To print a copy click on: [Application for Long-Term Care Medicaid](#); or call 1-800-479-6151 and ask that a 202LTC be mailed.
- Submit the application and supporting documents online using the AHS Uploader at [Document Uploader | Vermont Health Connect](#); or mail to:
 - Green Mountain Care
 - Application and Document Processing Center
 - 280 State Drive
 - Waterbury, VT 05671-1500
- DVHA will determine financial eligibility and a staff person will contact you to set up a phone interview to discuss the application and any documents that may need to be provided.
- Clinical eligibility for programs administered by ASD or DDS are determined as follows:
 - ◆ ASD: A Long-Term Care Clinical Coordinator will set up a face-to-face meeting to assess the person's abilities and the level of care need.
 - ◆ DDS: The Designated Agency will determine clinical eligibility after an application for services is filed with the agency.

Note: Time is of the essence for LTCM applications. If an applicant is approved, the start date for coverage will be backdated to the date of the application. Therefore, it is essential that applications be submitted as soon possible, especially if the person is accruing a debt because they do not have Medicaid coverage. It is acceptable to submit an incomplete application with demographic/household information and then submit resource information as it is gathered. The guardian should encourage hospital or facility staff to submit the application as soon as possible, even if it is incomplete.

Annual Medicaid Reporting Responsibilities

Guardians should verify that the annual Medicaid reporting paperwork requirements are adhered to for all eligible individuals on their caseload. DVHA sends the request to the address they have on file, which should be the person with access to the financial information, such as a service agency, a private or public financial guardian, POA, or representative payee.

Medicaid Resource Limits and Allowable Spend Downs

Individuals on Long Term Care Medicaid are currently allowed to have \$2000 in financial resources at a given time. If an individual owns their own home this amount increases to \$5000. Any resources over that amount can be used on items that the individual needs and/or benefits from or for home maintenance. These funds can also be added to a new or existing STABLE Account, a Pre-Need Burial Account, or in the case of an inheritance or large financial windfall, a Medicaid Qualifying Trust can be set up **See Part Twelve: Understanding Government Benefits/ Center for Medicaid and Medicare Services Medicare (CMS)/ Medicaid/ Medicaid Qualifying Trusts**. These funds should not be given away to family or friends.

Once the guardian has maxed out on spending down resources, the guardian or representative payee should consider sending any additional resources over \$2000 to DVHA (Department of

Vermont Health Access) in order to obtain or maintain financial eligibility for Medicaid. The process is as follows:

- (1) Identify with the Long-Term Care (LTC) Specialist and/or representative payee that the individual has excess resources, and you would like to send them to DHVA.
- (2) Write a check made out to DHVA. On the memo line of the check write “excess resource,” the first initial and last name of the individual and the last 4 digits of the individual’s social security number.
- (3) Enclose a note that states the excess resources are from the sale of property, car or other financial transaction for the individual.
- (4) Send the check to: DHVA/Gainwell P.O. Box 1645 Williston VT 05495
- (5) Verify that DHVA gets the check and that the LTC Specialist has updated the person’s file to reflect the change.

Medicaid Qualifying Trusts

Most individuals under guardianship rely on Medicaid, an income-based program, to pay for their long-term care services. For people with developmental disabilities, family members may want to assure that their loved one will be provided for in the future. Giving them an inheritance, however, could eliminate their eligibility for Medicaid benefits, which would then severely impact their ability to receive services. Under normal circumstances, a person’s estate needs to be spent down until they meet financial criteria for purposes of qualifying for Medicaid.

If a person (giftor) gives away their assets in contemplation of qualifying for Medicaid, the giftor will not qualify if the gift(s) were made outright within 60 months of the application. So, the gift must have been made for Medicaid qualifying purposes beyond the 60-month period. If the applicant transfers (or gifts) assets into a non-discretionary, income-only trust beyond a period of 60 months before applying for Medicaid then, according to federal law, the giftor is to qualify for Medicaid and thus avoid a spend-down of the estate.

Medicaid Qualifying Trusts are used to help people qualify for Medicaid. A person should always be advised to consult an attorney who is familiar with Medicaid law when establishing a Medicaid Qualifying Trust. It is important that Medicaid applicants and recipients know that the establishment of a trust requires that a trustee be appointed to manage the trust and assume responsibility for their finances. Money and property deposited into a Medicaid Qualifying Trust may only be used on behalf of the trust beneficiary; the trust may not be used to benefit other persons such as family or friends.

Income and resources deposited into a Medicaid Qualifying Trust are disregarded in determining the person’s Medicaid eligibility. However, any cash distributions paid by the trust to the Medicaid applicant or recipient (beneficiary) will count as income. In addition, trust distributions made on behalf of the trust beneficiary for food and shelter also count as income, but only to a certain extent. [SSA Policy for Disbursements from Trusts](#)

There are three types of Medicaid Qualifying Trusts, and each has its own rules. However, all three types must contain a provision that any money left in the trust at the time of the person’s

death must go to the State to repay Medicaid assistance provided on behalf of the deceased trust beneficiary. The three types of Medicaid Qualifying Trusts are:

- **Qualifying Income Trust (QIT)**- (also known as a Miller Trust) is the most common type of Medicaid Qualifying Trust. It can be established on behalf of a person of any age and there is no requirement that the person be disabled. It must be created and composed of only the income of the trust beneficiary. Resources may not be deposited into a QIT.
- **Special Needs Trust (SNT)**-must be established on behalf of a disabled person under age 65. It may be composed of both income and resources of the trust beneficiary.
- **Pooled Trust**-may be established on behalf of disabled persons of any age. Like a Special Needs Trust, it may be composed of both income and resources of the trust beneficiary. It must be operated by a non-profit organization for the benefit of its members. A Pooled Trust requires separate accounting for each trust beneficiary, but the trust corpus of all members is pooled for investment purposes.

Prior to opening a new trust, the following information should be considered:

- The trust needs to be listed as an asset for Medicaid renewal, benefit and housing applications, etc.
- Consider opening a pre-need burial account prior to establishing a trust. Trust funds cannot be used after a person's death, so the burial account needs to be set up and paid prior to death.
- Discuss trust vs STABLE account.
 - It may be more advantageous to set up a STABLE account if the person's funds are below \$15,000 so there are less management fees. This applies only to individuals with developmental disabilities.
 - Individuals can have a trust and a STABLE account.

Steps to follow when setting up a new trust:

- (1) Think about the financial needs of the person and determine how the funds will be distributed.
- (2) Choose a trustee who will help manage, invest and disburse funds for the person. You can also choose contingent trustees, so there is a backup in case something happens. A trusted person/organization, a lawyer or bank can serve as trustees. You will want to consider the cost implications.
- (3) Create the trust. The wording used in the trust documents is important. The wrong wording can create issues that disqualify beneficiaries from receiving benefits. Therefore, you should hire a lawyer who specializes in Medicaid Qualifying Trusts to set it up.
- (4) Fund it-You can fund it with assets like cash, investments, life insurance policies that pay out when the policy owner dies.
- (5) Invest the funds-Some trust fund account providers have rules on what investments you can fund the trust with so check before choosing a provider.

The [Special Needs Alliance Website](#) offers a Trustee Handbook [SNA Trustee Handbook](#)

Individuals new to guardianship occasionally have established trusts. It is the guardian's responsibility to determine the following information:

- Who is trustee?
- What is the balance?
- Are there annuities?
- Who manages the trust?
- What are the fees?
- How to make a request?
- What are the limitations?

Effects of Long-Term Visits or Out-of-State Placements on Benefits and Guardianship

Whenever someone receiving Vermont Medicaid leaves the state of Vermont for any reason, it is important to be aware of the limitations of VT Medicaid Insurance. For example, many doctors, hospitals, pharmacies and other medical providers cannot accept Vermont Medicaid as payment unless they are willing to enroll as a Medicaid provider. The following are steps that can be taken to increase the likelihood of insurance coverage:

- Plan in advance to be sure the person has sufficient medication on hand when going out-of-state.
- Check with medical providers in the state where the person will be living or visiting to determine if they are Vermont Medicaid providers. Many providers in towns bordering Vermont accept Vermont Medicaid, but some do not.
- If the medical provider is not enrolled as a Vermont Medicaid provider, the care provider should ask if they are willing to enroll. To enroll, the out-of-state provider must contact DXT Technology (1-802-878-7871).
- If the person needs emergency or unexpected medical care from a provider who is not enrolled in Vermont Medicaid, the medical provider can enroll as a Vermont Medicaid provider after treatment is provided and bill Vermont Medicaid for that treatment.

Individuals who receive Vermont Developmental Disabilities Home and Community-Based Services (HCBS) funding may be placed in a home out-of-state for the purposes of receiving services in a Shared Living home which is contracted and overseen by a Vermont developmental disabilities service provider. Necessary documentation must be provided in order to retain a person's Vermont Medicaid and Supplemental Security Income (SSI). The guardian should verify that the Service agency follows the three requirements outlined in the following document: [Maintaining Medicaid Eligibility when in Shared Living Out-of-State Guidelines](#). Specifically, this document outlines the process for informing the Social Security Administration (SSA), the Department of Vermont Health Access (DVHA) Member Services and the Developmental Disability Services Division with the required information when someone is placed in one of these out-of-state living arrangements. This document also provides information on how living out-of-state affects a person's benefits and what to report to DVHA and SSA when a person moves permanently within Vermont or to another state.

The following are issues to consider as they relate to guardianship:

- Vermont guardianship orders may not be recognized in other states and need to be registered in the state where the person lives.
- In some circumstances, the Vermont guardian may not have the authority to consent to medical treatments or the administration of certain psychiatric medications and must abide by the laws of the state where the individual is receiving treatment. For example, individuals under Vermont guardianship residing in Massachusetts facilities who require extraordinary medical treatment fall under the jurisdiction of a Massachusetts law called [Roger's Guardianship](#). This usually refers to treatment of antipsychotic medication, but it may include other intrusive treatments and procedures such as sterilization or electroconvulsive therapy. If the person is determined by the Massachusetts court as incapacitated, Roger's guardianship will be assigned to a designated person (usually an attorney) who will make decisions for the individual. The Vermont guardian may provide input; however, they have no legal authority in these situations.

Part Thirteen: Understanding Services Available in VT

VT Adult Long-Term Services and Supports Reference Table

For People with Highest Level of Need			
<p><u>Adult Services Division (DAIL)</u></p> <p>Choices for Care (high/highest)</p> <ul style="list-style-type: none"> • Nursing Home Level of Care • Must meet both Clinical and financial eligibility requirements • All settings: home-based, shared living, residential care, nursing homes (<i>see CFC Options</i>) • Adults with functional limitations • Focus on personal care • Self-directed options available • Fee for service model with set rates <p>Brain Injury Program</p>	<p><u>Developmental Disability Services</u></p> <p><u>Div (DAIL)</u></p> <p>Developmental Services Waiver</p> <ul style="list-style-type: none"> • Developmental Disability Diagnosis • Clinical and financial eligibility • Managed by local DA • Funding priority criteria • Shared living options • Per person budget • Ability to be flexible within overall budget 	<p><u>Adult Mental Health Division (DMH)</u></p> <p>Community Rehab & Treatment (DMH)</p> <ul style="list-style-type: none"> • Major mental illness diagnosis • History of psych hospitalizations • Managed by local DA • Assessment and treatment • Community supports • Capitated payment • Ability to be flexible within overall budget • Some (not all) have residential programs for CRT clients • Potential to access Intensive Recovery 	<p><u>Medicaid State Plan (DVHA)</u></p> <p>High Tech Services</p> <ul style="list-style-type: none"> • Medicaid nursing services • Equipment and therapies • Needs Prior Authorization • Managed through DAIL & VDH • Physician's order required <p>Specialty Acute Hospital Rehab</p> <ul style="list-style-type: none"> • Out of state facilities • Needs Prior Authorization • Physician's order required <p>Attendant Services Program (managed by DAIL/ASD)</p> <ul style="list-style-type: none"> • Permanent physical disability

<ul style="list-style-type: none"> • Age 16 or older • Diagnosed Moderate to Severe Brain Injury in last 5 years • Need daily 1:1 support to manage life skills • Be eligible for Medicaid • Residential and home-based options 	<p>Residential program based on clinical need, typically as step down from involuntary psychiatric hospitalization</p>	<ul style="list-style-type: none"> • Self-directed personal care • Medicaid coverage
--	--	--

For People with Moderate Level of Need

<p>Adult Services Division (DAIL) Choices for Care Moderate Needs</p> <ul style="list-style-type: none"> • Home-based • Program specific clinical eligibility • Less strict financial criteria • Case management, Homemaker, Adult Day & Flexible Funds • Limited Funding (not entitlement) <p>Area Agencies on Aging</p> <ul style="list-style-type: none"> • Case management • Family respite • Nutrition/wellness services • Eldercare Clinicians • Supports for self-neglect 	<p>Developmental Disability Services Div (DAIL) DS Flexible Family Funding</p> <ul style="list-style-type: none"> • For people who live with family • Sliding Scale • Flexible spending • Limited funding 	<p>Adult Mental Health Division (DMH) Out-Patient Mental Health Services</p> <ul style="list-style-type: none"> • Assessment • Therapy • Case management • Medications • Some (not all) offer psychiatry to outpatient clients <p>Eldercare Clinicians (DA/AAA partnership)</p> <ul style="list-style-type: none"> • Home-based therapy 	<p>Medicaid State Plan (DVHA) Adult Day Health</p> <ul style="list-style-type: none"> • Certified Adult Day Centers • Clinical eligibility • Medicaid coverage <p>Assistive Community Care Services</p> <ul style="list-style-type: none"> • Licensed Residential Care • Medicaid coverage <p>VT Chronic Care Initiative</p> <ul style="list-style-type: none"> • Case management • Medicaid coverage
--	--	---	---

For All People with VT Medicaid Healthcare Coverage

<ul style="list-style-type: none"> • Physicians • Hospital Acute Care • Nursing Facility Rehab 	<ul style="list-style-type: none"> • Medications • Medical Supplies • Durable Medical Equipment 	<ul style="list-style-type: none"> • Home Health Nurse • Home Health PT/OT • Home Health LNA 	<ul style="list-style-type: none"> • Home Health MSW • Hospice • Transportation to appts
<p>Other Healthcare Options: Blueprint for Health (primary care), SASH, Chronic Care Initiative, Veteran's Benefits</p>			

Resources and Options Counseling for People

Ageing and Disabilities' Resource Connections (ADRC):

- 211 (anyone): <http://www.vermont211.org/>

- Area Agencies on Aging Help Line (60+ and family caregivers): 1-800-642-5119 or <http://www.vermont211.org/>
- Vermont Center for Independent Living (under 60): 802-229-0501 or <https://vcil.org/contact/>
- Brain Injury Association of VT (people with brain injuries) Helpline: 802-244-6854 or <https://biavt.org/>

Developmental Services: Contact local Designated Agency

<https://ddsd.vermont.gov/services-providers/providers>

Mental Health Services: Contact local Designated Agency

<https://mentalhealth.vermont.gov/individuals-and-families/designated-and-specialized-service-agencies>

State Long-Term Services and Supports Program Resources

Choices for Care:

- VT Program Rules: https://asd.vermont.gov/sites/asd/files/documents/Choices_for_Care_Regulations_2020.pdf
- Provider Manual: https://asd.vermont.gov/sites/asd/files/documents/_Merged%20CFC_High_Highest_Manual.pdf
- Website: <https://asd.vermont.gov/>

Developmental Services:

- VT System of Care Plan: https://ddsd.vermont.gov/sites/ddsd/files/documents/Vermont_DS_State_System_of_Care_Plan.pdf
- Website: <https://ddsd.vermont.gov/>
- Designation Rules (same for Mental Health): https://mentalhealth.vermont.gov/sites/mhnew/files/documents/PolicyLeg/ADMINISTRATIVE_RULES_AGENCY_DESIGNATION_2003.pdf

Brain Injury Program:

- Provider Manual: [Microsoft Word - Cover Rev 05-06.doc \(vermont.gov\)](#)
- Website: [Home Page | Adult Services Division \(vermont.gov\)](#)
- Brain Injury Association of VT: <http://biavt.org/>

Community Rehab & Treatment (CRT):

- CRT Client Handbook: http://mentalhealth.vermont.gov/sites/dmh/files/ADULT/CRT/CRT_Client_Handbook_012008.pdf
- Website: <https://mentalhealth.vermont.gov/services/adult-mental-health-services/services-and-supports-adults/community-rehabilitation-and>

Department of VT Health Access:

- Medicaid State Plan: <https://humanservices.vermont.gov/about-us/medicaid-administration/medicaid-state-plan>
- VT Chronic Care Initiative: [Vermont Chronic Care Initiative | Department of Vermont Health Access](#)

Services Administered by Developmental Disabilities Services Division (DDSD)

The Developmental Disabilities Services Division (DDSD) plans, coordinates, administers, monitors and evaluates state and federally funded services for people with developmental disabilities and their families within Vermont. DDSD funds services through 15 private non-profit [Service Providers](#) and provides systems planning, technical assistance, training, quality assurance, program monitoring and standards compliance.

Home and Community Based Services Waiver (HCBS)

The primary funding source for adults with developmental disabilities in Vermont is the home and community-based services (HCBS) waiver described above in the benefits section. The DDSD waiver is part of the overarching Global Commitment to Health Medicaid Waiver, under which the federal government waives certain requirements and HCBS services are tailored to the individual's specific needs and based on an individualized budget and person-centered plan. Individuals with developmental disabilities who wish to receive services must first be found eligible. There are three parts to determining eligibility.

- (1) **Residency:** Be a resident of Vermont. This means being physically present in Vermont with the intention to remain in Vermont and to make one's home in Vermont.
- (2) **Financial:** Be found eligible for Medicaid. **See Part Twelve: Understanding Government Benefits/ Center for Medicaid and Medicare Services Medicare (CMS)/ Medicaid.**
- (3) **Clinical:** Be found eligible based on diagnosis of having a developmental disability. Clinical eligibility determination is arranged by the [Designated Agency](#).

In addition to the above criteria, the individual must be found to meet a funding priority as outlined in the [State System of Care Plan](#).

Once the individual is found eligible, the DA conducts a Needs Assessment to determine the areas in which there are unmet needs for the individual. Based on the assessment, the DA will determine if these identified needs can be addressed by DD services. If the assessment indicates the individual's needs may be met by home and community-based services, the DA will write a funding proposal to request funding to meet those needs. The funding request is based on the individual's needs and on the rates established by each agency.

Supports and services include the following:

- **Clinical Services** include assessment, therapeutic, medication or medical services provided by clinical or medical staff, and are medically necessary clinical services that cannot be accessed through the [Vermont DS System of Care Plan](#)
- **Community Supports** assist individuals to develop skills and social connections and may include teaching and/or assistance in daily living, support to participate in

community activities, and building and sustaining healthy personal, family, and community relationships.

- **Crisis Services** are time-limited, intensive, supports provided for individuals who are currently experiencing, or may be expected to experience, a psychological, behavioral, or emotional crisis.
- **Home Supports** provide services, supports and supervision for individuals in and around their residences up to twenty-four hours a day, seven days a week (24/7). Services include the assistance and resources to improve and maintain opportunities and experiences for individuals to be as independent as possible in their home and community. Home support settings may be in the home of a shared living provider or a home that is staffed by a service provider on a full-time basis. Supports may also be provided in the person's own home.
- **Respite Support** assist family members and home providers/foster families to help support individuals with disabilities who live with them. Supports are provided on a short-term basis because of the absence of or need for relief of those persons normally providing the care to individuals.
- **Service Coordination** assist individuals in planning, developing, choosing, gaining access to, coordinating and monitoring the provision of needed services and supports for a specific individual. Targeted Case Management is available for individuals with less frequent support needs and is meant for more independent individuals.
- **Supported Employment** assist transition age youth and adults in establishing and achieving work and career goals.

There are two levels of funding committees for home and community-based services (HCBS): The designated agency Local Funding Committee, and the State Funding Committee.

The [Designated Agency \(DA\)](#) Local Funding Committee reviews the funding proposal first. The role of the Local Funding Committee is to verify the individual's clinical eligibility; determine if the individual's needs meet a funding priority; and determine if the proposed plan of services is the most cost-effective means of providing the service.

If the individual does not meet a funding priority, the agency will put the person on a waiting list and explore other services by the agency or community services or supports for which the individual may be eligible. See [Understanding the Developmental Disabilities Services Waiting List: Better Reporting-Better Outcomes](#) for a brief description of the collection of waiting list information by service providers.

If the Local Funding Committee determines that an individual meets the clinical eligibility and a funding priority, the funding proposal is submitted to one of the two statewide funding committees for consideration.

- The [Public Safety Funding Committee](#) reviews funding proposals for individuals who pose a risk to public safety (generally due to a history of violent or sexually criminal behavior.)
- The [Equity Funding Committee](#) reviews all funding proposals that are not reviewed by the Public Safety Funding Committee.

The State funding committee verifies the Local Funding Committee's determination about whether the individual's needs are met with the funding priority, the proposed plan of services is the most cost-effective means of providing the service, all other possible resources for meeting the need has been explored, and whether all funding guidance has been followed.

The State committee makes a recommendation regarding the funding to the Director of Developmental Disabilities Services Division (DDSD), who makes the final decision. The DA notifies the individual of the Director's decision and his/her appeal rights, as needed.

When the funding request has been approved by the State, the DA provides the person with an authorized funding limit, which is the amount of money that is available to purchase the approved services to meet the individual's needs. Once the individual has been authorized for funding, he/she may then choose an agency that will provide these services.

The person may choose to receive services from the DA or Specialized Service Agency (SSA), or the person may choose to [self/family-manage](#) some or all of his/her services.

Once an individual starts receiving services, their needs and authorized funding limit are re-assessed annually or when the individual's circumstances change.

Visual flow chart that describes the [Developmental Disabilities Services Application and Assessment Processes](#) and Development of the Individual Support

Developmental Service Providers

Designated Agencies (DA)

The Department of Disabilities, Aging and Independent Living (DAIL) designates one [Designated Agency \(DA\)](#) in each geographic region of the state as responsible for ensuring needed services are available through local planning, service coordination, and monitoring outcomes within their region.

There are ten [Designated Agencies](#) contracted by DAIL that provide developmental services in Vermont. DAs must provide services directly or contract with other providers or individuals to deliver supports and services consistent with available funding; the state and local System of Care Plans; outcome requirements; and state and federal regulations, policies and guidelines. Some of the key responsibilities of a DA include intake and referral, assessing individual needs, providing regional crisis response services, and seeing there is a comprehensive service network that assures the capacity to meet the support needs of all eligible people in the region. Technically, DAs cannot refuse to serve eligible individuals with a demonstrated need.

Specialized Service Agencies (SSA)

There are five [Specialized Service Agencies](#) (SSA) that provide developmental services. A Specialized Service Agency (SSA) is a separate entity that is also contracted by DAIL. It must be an organization that either:

- Provides a distinctive approach to service delivery and coordination;
- Provides services to meet distinctive individual needs; or
- Had a contract with the Department of Developmental and Mental Health Services (DDMHS) developed originally to meet the above requirements prior to January 1, 1998.

Services Administered by Adult Services Division (ASD)

Adult Services Division (ASD)

The Adult Services Division (ASD) is responsible for the management and oversight of a full array of long-term services and supports for older Vermonters and adults with physical disabilities. The primary focus is on managing Medicaid funded long-term services and supports and as well as services provided through the Older American's Act and Vermont's State Plan on Aging. ASD works in partnership with community organizations in each region of the state who provide direct services to people within their area.

Adult Day Services

Adult Day Services offer community-based non-residential supports to assist adults with physical and/or cognitive impairments to remain as active in their communities as possible. Adult day centers provide a safe, supportive environment where people can come during the day and receive a range of professional health, social and therapeutic services, as well as a nutritious meal and valuable social interaction. Adult day services also provide respite, support and education to family members and caregivers.

ASD is responsible for certifying 14 Adult Day providers across the state and for providing quality assurance and improvement support as needed. [Adult Day Contact List](#)
Eligible participants receive funding for Adult Day Services through the Choices for Care program or the Medicaid Adult Day Health Rehab Services (DHRS) program. People also pay privately based on a sliding fee scale.

CFC Moderate Needs

Choices for Care provides limited funding for homemaker, adult day, case management, and 'flexible fund' services to people in the "Moderate Needs Group." People in this group do not meet nursing home level of care criteria. The intent is to prevent or delay the need for more costly long-term services and supports by providing these services. People do not need to be Medicaid eligible, however, funding is limited. [Moderate Needs Services Program Resources](#)

Area Agencies on Aging

Area Agency On Aging (AAA) [Older Americans Act \(OAA\)](#) services support Vermonters age 60 and older and are designed to help older Vermonters remain as independent as possible and to experience a high quality of life. OAA services are provided through Vermont's five Area Agencies on Aging (AAA) and include case management; nutrition services and programs; health promotion and disease prevention; information, referral and assistance; legal assistance; and family caregiver support. [Vermont Certified Area Agencies on Aging \(AAA\)](#)

Assistive Community Care Services (ACCS)

Assistive Community Care Services (ACCS) is a Vermont Medicaid benefit that pays for services to eligible Vermonters who live in participating Licensed Level III Residential Care Homes or Assisted Living Residences.

The Assistive Community Care Services (ACCS) program is an option for Vermont residents who are currently enrolled in the community Medicaid program and are residing in or are moving into Licensed Level III Residential Care Home or Assisted Living Residence. Functionally, these individuals cannot reside independently in their homes, but they do not have to require the level of care typically provided in nursing homes. That being said, their level of care need can be as great as that which is provided in a nursing home. By helping participants remain in assisted living, the state can avoid more expensive nursing home care. Through the ACCS program, eligible applicants are provided personal care service, routine nursing services, medication monitoring, and other benefits in Medicaid-approved residential care homes and assisted living homes.

The services available through the ACCS program can be accessed via Community Medicaid and is an entitlement if an individual is enrolled in Medicaid.

Choices for Care (CFC)/Long Term Care/Highest Needs

Choices for Care (CFC) is Vermont's Long Term Care Medicaid (LTCM) program and is part of the global commitment waiver. Full details about this program, including forms, policies, manuals can be found at [Program Resources | Adult Services Division \(vermont.gov\)](#). This program is designed to provide nursing home level of care services to individuals in the setting of their choice (Home based, Adult Family Care, Enhanced Residential Care, and Nursing Homes). Individuals must be both clinically and financially eligible in order to qualify to receive services. Clinical eligibility is based on an individual needing hands on care with at least 1-2 activities of daily living or they are cognitively compromised and require constant cueing to complete these tasks. Clinical eligibility is determined by the Long-Term Care Clinical Coordinator (LTCCC) in each region of the state and is based on a comprehensive assessment. To be financially eligible an individual must qualify for LTCM and the qualification criteria vary slightly depending on the composition of the household and the setting one wishes to receive services in.

Choices for Care will help pay for long-term care services in the setting of the person's choice. This could be in:

- Their home or the home of another person;
- An approved residential care home or assisted-living facility; or
- An approved nursing home.

To be eligible, the person must:

- Be a Vermont resident;
- Be at least 65 years old, at least 18 years old with a physical disability, or eligible for Medicaid under Medicaid for Children and Adults rules;
- Meet the financial criteria; and
- Meet the clinical criteria for nursing home level of care.

The following services are available in each setting:

- Home-Based:
 - Case management
 - Personal care services
 - Adult day centers
 - Respite for unpaid caregivers
 - Companionship
 - Emergency response
 - Assistive devices
 - Home modifications
- Adult Family Care Home:
 - Case management
 - 24-hour care
 - Personal care services
 - Adult day centers
 - Companionship
 - Respite for unpaid caregivers
- Residential Care Homes/Assisted-Living Facilities:
 - Case management
 - Nursing overview & assessment
 - Personal care services
 - Medication management
 - Recreational activities
 - 24/7 onsite supervision
 - Laundry services
 - Housekeeping services
- Nursing Homes:
 - Room and board
 - Skilled nursing & assessment
 - Personal care
 - Medication management & Pharmacy services
 - Social worker
 - Recreational activities

- 24/7 onsite nursing care & supervision
- Laundry and housekeeping services
- Transportation services
- Physical, occupational, & speech therapy
- Nutrition and dietary services

Individuals can shift from one setting category to another when their needs change. There is no need to reapply for LTCM, but rather a change form is completed to shift the LTCM dollars to fund the appropriate setting.

Money Follows the Person (MFP)

The goal of the MFP grant is to work together with the Choices for Care Program to help people living in nursing facilities to overcome barriers that have prevented them from moving to their preferred community-based setting. The program provides participants the assistance of a Transition Coordinator and up to \$2,500 to address barriers to transition. More information can be found here [Money Follows the Person Program | Adult Services Division \(vermont.gov\)](#)

Traumatic Brain Injury (TBI) Program

The Brain Injury Program provides rehabilitation and life skills services to help Vermonters with a moderate to severe traumatic brain injury, live successfully in community-based settings. This is a rehabilitation-based, choice-driven program intended to support people to achieve their optimum independence and help them return to work. A list of TBI Service Providers can be found here: [Traumatic Brain Injury Service Providers Contact Information](#)

Services Administered by Department of Mental Health (DMH)

The Department of Mental Health oversees the publicly funded community-based and inpatient services to Vermonters to ensure early intervention and mental health treatment and supports as needed to live, work, learn, and participate fully in their communities.

The Department of Mental Health (DMH) contracts with community providers of mental-health services for adults with mental health conditions and serious mental illness. The public mental-health system has 10 designated nonprofit agencies (Designated Agencies, or DAs) in all major geographical areas of Vermont and one Specialized Services Agency (SSA). A listing of DAs and the SSA can be found here: [Designated and Special Services Agencies | Department of Mental Health \(vermont.gov\)](#)

Outpatient MH Services

The Adult Outpatient (AOP) program serves adults experiencing mental health challenges. The array of services available for people in the AOP program vary by DA and may include; clinical assessment, service planning and coordination, community supports, therapy, medication evaluation and management, and crisis stabilization.

Community Rehabilitation Services CRT

The Community Rehabilitation Services (CRT) program serves adults with the most serious mental illnesses such as schizo-phrenia, bipolar dis-order, and major depression. Eligibility criteria includes the existence of a qualifying mental health diagnosis, a treatment history indicating a need for more intensive services, and severe functional impairment. If a person is determined to be eligible, the individual is the highest priority for designated agency or specialized services agency treatment services. People are assigned a treatment team of providers which may include a therapist, case manager, psychiatrist, nurse, and a supported employment specialist.

Emergency Services

Emergency (or Crisis) Services are time-limited, intensive supports provided for individuals and families who are currently experiencing, or may be expected to experience, a psychological, behavioral, or emotional crisis. Services may also be provided to the individual's or family's immediate support system. These services are available 24 hours a day, 7 days a week.

Emergency/Crisis Assessment, Support, and Referral includes initial information gathering, triage, training and early intervention, supportive counseling, consultation, referral, and crisis planning. Supports may include:

- Outreach and Stabilization
- Clinical Diagnosis and Evaluation
- Treatment and Direct Support
- Integration/Discharge Planning to provide services in the person's home or an alternative setting. Assessment may also include screening for inpatient psychiatric admission.

Emergency/Crisis Beds offer emergency, short-term mental health supports around the clock in a setting other than the person's home.

These services are delivered locally by DAs and SSAs.

Intensive Residential Recovery (IRR)

An Intensive Residential Recovery (IRR) Program offers an array of therapeutic and recovery-oriented services within a residential setting. Each IRR has a high level of staffing to resident ratio which allows for the capacity to offer person-centered, and wellness focused daily supports. All IRRs are "staff secure", meaning on-site staffing is available to provide more intensive individual focus and oversight as needs arise. The overall focus of the IRR programs is to ensure a safe therapeutic environment where people can work on their recovery goals and develop, learn and practice the skills needed to be as successful as possible in the community-based programs. The IRR programs are short-term/transitional so assistance with establishing more permanent housing, or housing in a less intensive residential program, is included in all resident's program plans.

The Department of Mental Health currently operates Vermont's only state run Intensive Residential Recovery facility, Middlesex Therapeutic Community Residence. DMH contracts with four additional IRRs for adults in Vermont. They can be found here: [Other IRR Programs | Department of Mental Health \(vermont.gov\)](#)

Psychiatric Hospitalization

The Department of Mental Health (DMH) currently operates Vermont's only state-run psychiatric inpatient facility, Vermont Psychiatric Care Hospital. In addition to VPCH, DMH currently designates six hospitals to provide psychiatric inpatient care in Vermont. All six hospitals provide services to adults while the Brattleboro Retreat also provides inpatient services to children and youth. They can be found here: [Designated Hospitals | Department of Mental Health \(vermont.gov\)](#)

Hospitalization may occur voluntarily when someone decides it is the best decision for themselves, at the insistence of a family member or a professional. Involuntary hospitalization occurs only when an individual is a danger to themselves or to others and is refusing voluntary inpatient treatment or as a result of a court order.

Filing Grievances and Appeals on Behalf of the Individuals

Guardians may file a grievance (complaint) when dissatisfied or an appeal when a client has received an "adverse benefit determination," which includes denials of a requested service, reduction or suspension authorized service, failure to provide timely services, etc. The instructions about filing vary by program but should be included with written notifications about service authorizations. Sometimes this will involve filing an appeal within DAIL or other Departments within the State of Vermont. Seek assistance and support from the supervisor/Director when filing, as it is important to present information as it relates to the specific program regulations.

Services Administered by Department of Children and Families (DCF)

Food Assistance

3SquaresVT is Vermont's food stamp program. 3SquaresVT helps low-income individuals and families buy food. Each month the Department for Children and Families Economic Services Division (DCF/ESD) deposits money onto a debit card like a bank card. More information about eligibility and how to apply can be found here: [3SquaresVT | Department for Children and Families \(vermont.gov\)](#)

Fuel Assistance

Helps pay part of an individual's home heating bills, whether they own their home or rent, pay for heat directly or as part of rent. More information about eligibility and how to apply can be found here: [Fuel Assistance | Department for Children and Families \(vermont.gov\)](#)

Other Services and Resources

Vermont Chronic Care Initiative (VCCI)

The Vermont Chronic Care Initiative (VCCI) provides holistic, intensive, and short-term case management services to Vermont residents enrolled in Medicaid. VCCI works with members referred for complex case management by healthcare and human services providers, state colleagues and partners, as well as through care management predictive modeling methodology. VCCI case managers and outreach coordinators also welcome members new to Medicaid, and screen members to identify and prioritize needs. The screening tool asks members questions about access to care (including primary and dental), the presence and status of health conditions, and other needs that would assist them in maintaining and/or improving their health such as housing, food and safety. The VCCI team works to connect members with medical homes, community-based self-management programs, local care management teams and help members to navigate the system of health and health related care. VCCI is administered by DVHA and AHS. Licensed case managers trained in the complex care model, deliver services in communities throughout the state. The VCCI referral form can be found here: [VCCI Referral Form](#) and a list of VCCI Contact list can be found here: [VCCI Contact List](#)

Pre-Admission Screening and Resident Review (PASRR)

Pre-Admission Screening and Resident Review is a federally required process that prevents individuals with mental illness, intellectual disability, or a related condition from being admitted to nursing facilities until a full review is conducted by the Developmental Disabilities Services Specialist or a reviewer from DMH. The purpose of the review is to prevent unnecessary institutionalization and to recommend the least restrictive, most appropriate person-centered services to meet the individual's medical and disability-related needs. Individual's aged 18 and over who enter nursing facilities for either short term rehabilitation or for long-term care may qualify for Specialized Day Services (known as specialized services in a nursing facility) necessary to meet their unique needs related to their disability. Specialized services improve the quality of life for people in nursing facilities by providing support to address social, emotional, communication and recreational needs. The services are authorized on a temporary, individual basis by DDS or DMH, services could be approved for as little as 30 days, or indefinitely if continually re-approved. The services are provided by the Designated/Specialized Services Agencies.

If an individual receiving specialized services moves out of a nursing facility, requests for additional Home and Community-Based Services funding go through the standard process for requesting HCBS, Choices for Care, or DMH funds.

Supports and Services at Home (SASH)

SASH coordinates the resources of social-service agencies, community health providers and nonprofit housing organizations to support Vermonters who choose to live independently at home. Individualized, on-site support is provided by a Wellness Nurse and a SASH Care Coordinator. SASH serves older adults as well as people with special needs who receive Medicare support. Benefits to SASH Participants are:

- Improved quality of life
- Comprehensive health and wellness assessments
- Individualized Healthy Living Plans
- Money savings through preventive health care
- Regular check-ins by caring staff
- Health coaching and access to wellness nurses
- Help in planning for successful transitions (e.g., following hospitalization), navigating long-term care options and during a crisis
- Access to prevention and wellness programs
- Support in self-managing medications

More information about SASH can be found here: [SASH \(Support and Services at Home\): A Caring Partnership - Better Care, Healthier People, Smarter Spending \(sashvt.org\)](https://www.sashvt.org)

Vermont 211

Vermont 211 is a free, confidential information and referral program of the United Ways of Vermont, helping to connect Vermonters with a wide range of community, health, and human resources and services. [Vermont 211](https://www.vermont211.org)

Lifeline Services

A person under guardianship who receives government assistance (i.e., SNAP, Medicaid, SSI) may qualify for [Lifeline](https://www.vermont211.org/lifeline), which is free monthly wireless service offered through Q Link Wireless.

Private Pay for Services- Individuals with Financial Resources

Sometimes people come into guardianship with too much money to be eligible for government benefits and government funded services. Depending on the amount of money the person has, they may be able to pay out of pocket for the services they require until they are eligible for Medicaid. In some cases, they can also pay for a private professional guardian and public guardianship can be terminated.

Part Fourteen: Abuse, Neglect and Exploitation

Abuse

Vermont law provides a broad definition of “abuse” as it applies to vulnerable adults. Abuse is defined as:

- (1) any treatment of a vulnerable adult which places his or her life, health, or welfare in jeopardy or which results in impairment of health;

- (2) any conduct committed with intent to cause or reckless disregard of unnecessary pain, harm, or suffering;
unnecessary or unlawful confinement or restraint of a vulnerable adult;
- (3) intentionally subjecting a vulnerable adult to behavior which results in intimidation, fear, humiliation, degradation, agitation, disorientation, or other forms of serious emotional distress;
- (4) any sexual activity with a vulnerable adult by a caregiver who volunteers for or is paid by a care-giving facility or program (this definition shall not apply to a consensual relationship between a vulnerable adult and a spouse, nor to a consensual relationship between a vulnerable adult and a caregiver hired, supervised, and directed by the vulnerable adult);
- (5) administration of a drug, substance or preparation to a vulnerable adult for a purpose other than legitimate and lawful medical or therapeutic treatment.

Some indicators of possible physical abuse include:

- Self-reports of abuse or rough treatment, such as being hit, slapped, or otherwise mistreated
- Broken bones, skull fractures, sprains, dislocations, internal injuries, open wounds, cuts, and other untreated injuries in various stages
- Bruises in unusual locations that are not consistent with a fall or bumping into furniture
- Open sores or injuries that should be bandaged
- Limbs in awkward positions, which may indicate neglected fractures
- Broken eyeglasses/frames
- Unexplained weight loss or hair loss
- New onset of confusion or disorientation
- Injury not properly cared for
- Pain on touching
- Burns and/or abrasions that may be caused by cigarettes, rope friction, chains, or other means of confinement
- Signs of confinement, such as door locks, restraints, or blocked exits
- Dehydration or malnutrition without illness or other cause
- Pallor, sunken eyes or cheeks
- Bed sores
- Medication administration errors (either too much or not enough)
- Poor skin hygiene, missing hair, or bruising on scalp
- Dirty clothes
- Frequent trips to emergency rooms
- Frequent health care shopping among providers
- Lack of necessary walkers, canes, commodes, telephones, teeth, artificial limbs, glasses, or wheelchair
- Lack of heat, food, or water

The guardian may observe behaviors that also raise the question of possible physical abuse, such as:

- Evidence that the person is easily frightened, agitated, or trembling
- Denial of a problem in the face of other possible evidence
- Hesitation to speak openly
- Implausible explanations for injuries
- Depression

Indicators of possible sexual abuse:

- Report of being sexually assaulted, abused or raped
- Extreme agitation when bathed, changed, or examined
- Bruising in the genital or breast area
- Unexplained vaginal or anal bleeding
- Torn, stained, or dirty underclothes
- Genital or urinary irritation, injury, infection, or scarring
- Nightmares, night terrors, or other sleep disturbances
- Phobic behavior
- Extreme anxiety, including difficulty sleeping, eating, fearfulness, or compulsive behavior
- Inappropriate, unusual, or aggressive sexual behavior

Emotional Abuse

Verbal, emotional, or psychological abuse is the infliction of pain or distress through verbal or nonverbal acts. This type of abuse includes verbal assaults, insults, threats, intimidation, humiliation, and harassment. It also includes treating adults like infants; isolation from family, friends, or other regular activities; or care that is depersonalizing or that treats the person as an object.

There may be no physical evidence of this type of abuse, but it is highly correlated to other types of adult abuse. A guardian suspecting physical or sexual abuse should look for emotional abuse as well.

Indications of verbal, emotional, or psychological abuse may include the following:

- Reports of being verbally mistreated
- Emotional agitation with no apparent cause
- Isolation
- Withdrawn and noncommunicative behavior
- Expressions of a death wish
- Observation of anyone treating the person as a child, using shame or ridicule, or treating the person with contempt
- Isolation from family or friends
- Unexplained weight loss
- Sleep, eating, or speech disorders

- Depression
- Attention-seeking behavior

Neglect

Neglect may be a single incident or repeated conduct which results in physical or psychological harm. "Neglect" is defined as:

- (1) Failing to provide care or arrange for goods or services necessary to maintain the health or safety of a vulnerable adult, including food, clothing, medicine, shelter, supervision, and medical services;
- (2) Not protecting a vulnerable adult from abuse, neglect, or exploitation by others;
- (3) Failure to carry out a plan of care for a vulnerable adult when such failure results in physical or psychological harm or a substantial risk of death to the vulnerable adult;
- (4) Not reporting significant changes in the health status of a vulnerable adult to a physician, nurse, or immediate supervisor, when the caregiver is employed by an organization that offers, provides or arranges for personal care

Indicators of caregiver neglect may include the following:

- Self-report of being neglected
- Dehydration, malnutrition, untreated bedsores, or poor personal hygiene
- Unattended or untreated physical or mental health problems
- Unsafe living conditions, such as absence of utilities, heat, or running water
- Unsanitary or unclean living conditions, indicated by dirt, fleas, lice, soiled bed linens, fecal or urine smell
- Inappropriate or inadequate clothing
- Being locked in or out of residence
- Inadequate supervision
- Improper administration of medication
- Missed health care appointments
- Failure to follow medical, therapy, or safety recommendations

The following are common indicators for identifying poor care, neglect, or abuse in residential facilities:

- Unanswered call bells or signal lights
- Inappropriate use of physical or chemical restraints
- Excessive use of restraint
- Overuse of sedation
- Infrequent or irregular toileting
- Frequent urinary tract infections
- Adult brief use when need is questionable
- Urine and other body odors
- Poor mouth care as evidenced by odors and crusting
- Unshaven facial hair

- Uncombed hair
- Long and dirty fingernails/toenails
- Eyeglasses or dentures locked away or missing
- Skin breakdown on buttocks or in skin folds
- Dehydration, excessive thirst
- Dry mouth, sunken eyes, very dry skin, speech problems
- Inadequate assistance with feeding leading to poor nutrition
- Threats, rough handling, or scolding
- No access to a telephone or no options for privacy
- Refusing to facilitate ombudsman intervention
- Poor staff training
- Inadequate supervision of staff
- Inadequate staffing ratios for number of residents

How the person acts may give further clues that something is not right. Some examples of behaviors that may be clues to the occurrence of abuse or neglect include the following:

- Fear, either in general or of a specific caregiver
- Being withdrawn
- Depression or sadness
- Feelings of helplessness
- Resignation
- Unwilling or hesitant to speak openly
- Stories which are difficult to believe
- Confusion or disorientation
- Contradictory statements in the absence of mental dysfunction
- Anger
- Unresponsiveness
- Nervousness, anxiety, or agitation

The guardian might pick up other clues and indicators from the care provider's behavior, such as the following:

- Not allowing the person to speak for himself or herself or see others without the provider's presence
- Attitude of indifference, anger, or unwillingness to help
- Blaming the person for being incontinent or forgetful
- Threats, insults, harassment, or other aggressive behavior
- History of abusing other dependent people
- Alcohol or drug involvement
- Flirtatious or coy behavior, which may indicate inappropriate sexual behavior
- Isolating the person from activities, family members, friends, etc.
- Conflicting accounts of incidents
- Unwillingness to comply with care plan implementation

- Unwillingness to cooperate with other providers

Exploitation

Vermont statutes define exploitation of a vulnerable adult as:

- (1) Willfully using, withholding, transferring or disposing of funds or property of a vulnerable adult for the wrongful profit or advantage of another;
- (2) Acquiring possession, control or an interest in funds or property of a vulnerable adult through undue harassment or fraud;
- (3) Forcing a vulnerable adult against his or her will to perform services for the profit or advantage of another;
- (4) Any sexual activity with a vulnerable adult when the vulnerable adult does not consent or is incapable of resisting due to age, disability, or fear of retribution or hardship

Indicators of possible exploitation include the following:

- Self-reports of being exploited
- Social isolation, with few supports or contacts
- Missing property or belongings
- Disappearance of funds or valuable property
- Suspicious signatures on checks or other documents
- Forged signature on transferring property or title
- Sudden changes in bank accounts, such as large or unexplained withdrawals
- Addition of names to bank accounts
- Unauthorized use of credit cards or ATM cards
- Abrupt changes in estate-planning documents, deeds, or other financial documents
- Sudden transfer of assets or gifts
- Bills unpaid even when resources are available
- Failure to spend funds on needed services
- Providing services that are unnecessary

The Fundamentals of Guardianship What Every Guardian Should Know, American Bar Association, 2017, pp. 43-48.

Reporting Abuse, Neglect, Exploitation or Improper Care to Adult Protective Services (APS) or Survey and Certification (S&C)

A primary responsibility of a guardian is to protect an individual from harm. This harm can come from the people with whom the individual lives, service providers, friends, or family. By law, a guardian is a mandated reporter and must report suspected abuse, neglect, and/or exploitation in an initial report to APS or S&C within 48 hours of a suspected occurrence. You do not have to prove or be certain that a vulnerable adult has been abused, exploited, or neglected in order to make a report; you only need to have reason to believe that abuse may have

occurred or is still occurring. It is the responsibility of APS or S&C to investigate whether or not abuse, neglect, or exploitation has occurred. It is also the job of the investigator to determine whether or not an individual is “vulnerable” as defined by relevant law. See below for details about APS and S&C, along with links to filing reports.

The Division of Licensing and Protection has two branches that work to protect vulnerable adults and individuals receiving care:

[Survey and Certification \(S&C\)](#) is the State Survey Agency for the State of Vermont, and in this role, they license and certify health care organizations to ensure they meet minimum state and federal regulations. S&C surveys health care facilities and agencies to assure they are in compliance with federal and state regulations. S&C employs registered nurses who travel statewide to hospitals, home health agencies, nursing homes, residential care homes, and a host of other health care providers to assess whether the care and services given to residents and patients meet federal and state regulations. A report should be made to S&C if you feel that patients or residents have been harmed or may be harmed by the inappropriate practices of a healthcare organization. Organizations may be out of compliance with regulations, even if no staff members are intentionally or recklessly harming patients or residents.

[Adult Protective Services \(APS\)](#), investigates allegations that a vulnerable adult was abused, neglected, or exploited by an alleged perpetrator. APS’ focus is primarily on the conduct of individuals and not healthcare systems. A report should be made to APS if you feel that a vulnerable adult has been harmed because of actions (or inaction) taken by a specific person or persons. In most cases, this requires the alleged perpetrator to either intentionally or recklessly harm the vulnerable adult. Vermont Law establishes who are vulnerable adults and what constitutes abuse, neglect, and exploitation.

Making a Report

[Make a Report with S&C](#)

[Make a Report with APS](#)

Individual is Victim of a Crime, Abuse, Neglect, or Exploitation

If the person for whom you are guardian was a victim of a crime, be guided as much as possible by the individual’s desire to share personal information or information about the offense. However, if the crime involved allegations of abuse, neglect, or exploitation, the Public Guardian, as a mandated reporter, must make a report to Adult Protective Services within 48 hours of receiving the information. [Make a Report with Adult Protective Services | Division of Licensing and Protection \(vermont.gov\)](#) If the person lives with the alleged preparator, the Public Guardian, in consultation with their supervisor, should determine whether it is safe for the person to continue living in the home while the investigation is pending. If the individual is at risk for further abuse, the guardian should contact the DAIL AGG and request that they file a Request for a Relief from Abuse Order in Family Court [Relief From Abuse | Vermont Judiciary](#).

Vermont law guarantees crime victims certain rights and opportunities to participate in the legal process. They are as follows:

- The right to choose whether to participate
- The right to information about Vermont's victim rights and the criminal process
- The right to be notified about events in the case and to be present for court hearings
- The right to be notified about the defendant's release, status, or location
- The right to offer a Victim Impact Statement
- The right to be heard at sentencing or change of plea hearings
- The right to Victims Compensation, where eligible
- The right to request restitution
- The right to speedy prosecution
- The right to safety and to defend one's privacy
- The right to not speak unless subpoenaed
- The right to return of property
- The right to free victim assistance from a Victim Advocate – see link below

If the person was a victim of Sexual Assault, Vermont has a Sexual Assault Program, which offers victims trained Sexual Assault Nurse Examiners at hospitals in Vermont, testing, treatment, support services, HIV infection prevention and a limited amount of counseling.

Additional resources can be found below:

- [Your Rights as a Victim of Crime in Vermont](#)
- [Support for Victims](#)
- [VT Victims Services Resource Guide](#)

Part Fifteen: OPG Programmatic Guidelines

Orientation and Training of Guardians

Upon hire, the Department of Human Resources offers New Employee Orientation. It covers the following topics:

- An introduction to health benefits
- Information about other benefits the State offers
- A review of important employee responsibilities and policies.
- An overview of VTHR Employee Self Service
- An overview of the New Employee Center in VTHR where you will review and enter key personal and pay information, as well as enroll in benefits.

More information can be found here: [New Employee Orientation - NEO | Department of Human Resources \(vermont.gov\)](#)

New employees are also required to complete trainings on topics such as domestic violence, internet safety, HIPPA, and mandated reporting.

The OPG Procedure Manual should be reviewed in full. It will provide in-depth information as well as guidance on all aspects of the provision of guardianship services.

A new guardian begins their employment by meeting with and then shadowing the supervisor and other guardians. This provides an opportunity to observe guardians with different personalities/styles and to ask questions. While shadowing, new guardians should be introduced to local service agency staff, court clerks, DDS and Adult Services Division (ASD) staff, nursing home staff etc.

Additional Orientation Topics Not Covered in depth in the OPG Field Guide:

- [OPG Organizational Chart](#)
- [DDS Organizational Chart](#)
- [DAIL and AHS charts](#)
- [DDS Policy Guidelines](#)
- [AHS Minimum Accessibility Requirements](#)
- [OPG Website](#)
- [DAIL Intranet](#) – This website can only be accessed by DAIL employees.
- [DAIL Intranet Document Library for OPG](#)

OPG Staff Meetings, Internal and External Trainings

The OPG offers virtual and in-person regional and/or full staff meetings. Frequently special guest speakers will address the staff on subjects of topical interest. Regional meetings offer a forum for discussion of individual cases, brain storming, and strategizing to address regional concerns, issues, and topics of interest. The director and the supervisors are responsible for identifying training needs and opportunities. Sometimes an employee's need for training and development is identified through annual evaluations, which may highlight the need for specific training for a particular guardian.

Guardians and supervisors are encouraged to identify job related training opportunities that are offered externally, and requests are approved if funds are available. Guardians interested in identified trainings must obtain the approval of their supervisor/Director before registering for trainings with fees. The cost of some trainings (often for more than one guardian) may be coordinated by the OPG Administrative Assistant with related payments made directly by the Department. Arrangement for payment of some individualized trainings, once approved, is the responsibility of the guardian. In some circumstances, reimbursement of the cost of training may be obtained by submitting documentation of the amount paid through the VISION expense system.

The State of Vermont offers a Learning Management System, SOV LINC, with over 8,000 training opportunities, including instructor-led and online trainings. More information can be found here: [SOV LINC | Department of Human Resources \(vermont.gov\)](#)

OPG On-Call System

OPG utilizes Central Vermont Communications- Advanced Answering Center (CVC- AAC) as an answering service for guardianship emergencies 24/7. OPG provides the service with a phone tree, which lists the name and phone numbers (office, cell, home) for each guardian and indicates three back-up guardians to call if the guardian cannot be reached. When the service receives a call for a guardian, they call all numbers, and, if they do not hear back within 10 minutes, they reach out to the back-up guardians and eventually will call the Director. The service generally provides the name and call-back number of the caller, the name of the client, and the nature of the issue.

Most emergency calls can be handled over the phone. Keep track of the time spent and record it on your timesheet. If you get a call regarding a person who is not on your caseload, it is advisable to check to be sure we are the guardian and have the appropriate power. Sometimes people mistakenly call our answering service about children in DCF custody or adults in private guardianship. Be careful not to authorize medical treatment unless you are confident that we have medical guardianship. If the guardian is unsure about the status of the individual, they should access the electronic record system for information before making any decisions.

Guardians are not expected to “sit by the phone” or curtail life activities to ensure phone availability but should have the phone with them and check it regularly in case they have received a call. Guardians may go off the service, with approval from their supervisor, to take a break/vacation, attend an event, or when they are sick. If you are going to be off the service for an extended period (more than a day) the Call Center Supervisors should be notified by email: supervisors@cvc-aac.com. You will need to let them know the date/time of when you will be away, the date/time of when you will return, along with any changes to the back-up guardian rotation.

Caseload Assignment Considerations

Caseload assignments are made by the Regional Supervisors in conjunction with the Director. When possible, OPG will honor a person’s request for a particular guardian if the guardian’s caseload size or other considerations permit. Recommendations from interested persons, such as attorneys, home providers, case managers, service coordinators, etc. may be considered.

When considering caseload assignments, the OPG takes into consideration geography, current commitments, specialty skills and caseload size. The following are considerations:

- Is the guardianship a good match for the person and the particular skills, knowledge and abilities of the guardian?

- Is it possible to provide guardianship services in both an efficient and effective manner? Generally, this means the person must be within a reasonable travel distance from the guardian.
- Does OPG have more than one person in a residential setting? Is there a close familial relationship (siblings, mother/son, etc.) between two people under public guardianship? In some cases, it may make sense to assign the same guardian.
- Is there a potential conflict of interest? **See Part Fifteen: OPG Programmatic Guidelines/ Conflicts of Interest in Guardianship.**

Maximum Caseload Limits

National recommendations for ideal caseload limits are 20 individuals for a full-time guardian and 10 individuals for a supervisor. However, OPG's numbers far exceed those recommendations, and, at present, the maximum caseload limit is closer to 30 for both guardians and supervisors. In general, guardianship of older Vermonters may require more time and extensive effort than people with developmental disabilities, but individual circumstances can vary greatly. This variation is considered when assigning caseloads.

If staff take an extended family or medical leave or the OPG experiences one or more staff vacancies, some caseloads may temporarily exceed the above guidelines. Continuity of relationships is highly valued once a person becomes familiar with and trusts their guardian. In those cases, OPG prefers to avoid frequent reassignments unless the person requests a change, the person moves far away, a guardian's caseload has become too large, or a conflict has emerged. For many clients, their guardian has known the person longer than anyone else on their team.

Transferring a Person to another Guardian

There are times when the transfer of a person from one guardian to another will occur, such as building a caseload for a new guardian, a conflict between two people on an established caseload, rebalancing caseloads within the OPG and request of an individual or agency for a different guardian. If the individual under guardianship objects to the change in guardian, they should contact the current guardian's supervisor or Director to discuss their concerns prior to making a change.

When a decision is made to transfer a person to another caseload, the following actions should be taken:

- The current guardian and their supervisor will determine what, if any duties or documentation needs to be completed before the transfer can occur (completion of advance care planning, case notes, annual reviews, court required paperwork, etc.) The transfer should not proceed (unless it is an emergency) until a plan is in place for completion of duties and paperwork.
- The current guardian will review the court order and assess if there are any powers of guardianship that could be modified. If there are, they will complete an annual review and recommend modification.

- The current guardian will set up a time to meet/talk to the new guardian. Information about the person's history, assigned areas of guardianship, current needs, living situation, medical issues, support agency, financial status, insurance information will be discussed/shared.
- New guardian will review pertinent evaluations, ISA/POC, Behavior Support Plan, IEP, Advance Directives and/or DNR/DNI documents, case notes, annual reviews, etc.
- The current guardian will set up a team meeting to introduce the new guardian to the individual and support team. Depending on the circumstances, the new guardian may attend several meetings before officially taking over the case. The new guardian will provide their contact information to the person and their team members.
- The outgoing guardian will notify any family and/or natural supports of the transfer and provide them with the new guardian's contact information.
- Once the transfer is finalized, the new guardian will provide their contact information to: Representative Payee or Community Financial Specialist, Medical Practitioners, OPG Administrative Assistant and the Probate Court.
- New guardian will document in electronic case file system the date they took over the case.

Performance Expectations and Major Job Duties

Public Guardians

Casework Duties and Expectations:

- Establish relationships with individuals under guardianship and encourage participation in decision making
- Assess need for services (general supervision, medical, social, educational, legal, etc.)
- Make necessary referrals for service
- Monthly contact with each person, either in their home, in the community, or video meeting, phone/text/email conversation with individual or team member to monitor the person's wellbeing, that their rights are being protected and necessary services/supports are being provided.
- Contact must be in-person or a home visit at least every other month with a minimum of four home visits per year. An "eyes on" view of the individual provides the guardian with firsthand observations and information. It is important for the guardian to establish relationships with the individuals under guardianship and encourage decision making in all aspects of their lives.
- Establish, pursue and re-evaluate guardianship goals (care plan)
- Participate in significant meetings/discussions relevant to health, safety and protection of rights
- Advocate for person and coordinate necessary services
- Promptly provide signature or approval when required and follow through on commitments
- Display creative problem solving
- Maintain benefits for individual

- Seek private guardians
- Assist individual to become independent if possible and modify/terminate guardianship

Documentation Requirements – **See Part Fifteen: OPG Programmatic Guidelines/ Documentation Requirements** for more specific information related to each requirement:

- Case notes (monthly at minimum) in electronic record system by 15th of the following month
- Demographic information must be kept up to date
- Case log completed by the first Monday of the following month
- OPG 90-Day Assessment for Title 18
- Annual Review for Title 18 on anniversary of court order
- Annual Report on Adult Guardianship Title 14 completed on the date of the original court order.
- Inventory of Guardian for Title 14-30 days after appointment
- Annual Summary of Account for Adult Guardianship for Title 14 – Financial Guardianship only

Interpersonal Skills:

- Maintain professional interactions (in person, telephone or email) with clients, team members, family members, judges, lawyers, health care providers, law enforcement, etc.
- Return calls and emails within a reasonable time frame

Personal Coping Skills:

- Keep supervisor informed about challenges and level of stress related to job
- Solicit assistance from supervisor when needed

OPG Meetings and Division/Department Meetings:

- Attend all scheduled statewide and regional OPG meetings
- Attend Division/Department meetings as requested by supervisor or Director
- Attend OPG/Agency meetings when scheduled.

Regional Supervisors

Since Regional Supervisors are also Public Guardians, they have the same performance expectations and major duties as a Public Guardian, along with the additional expectations and duties as follows:

- Assist director with scheduled statewide and regional meetings/agendas
- Arrange agency meetings as needed
- Provides training about guardianship to organizations such as Designated Agencies, healthcare providers, schools, etc.

- Responds to wide ranging questions about guardianship and guardianship-related issues.
- Manages referrals for public guardianship for persons with developmental disabilities by gathering information from all parties involved and exploring any less restrictive alternatives that may be put in place and/or viable options for private guardianship.
- Responds to client and/or interested party complaints.
- Assign new cases
- Facilitate hiring, training and evaluation of new and established guardians as well as conduct disciplinary proceedings when necessary
- Maintain/establish regular contact to provide support/supervision to assigned guardians as well as feedback on performance and documentation expectations.
- Approve requests for annual/personal leave, sign off on bi-weekly time sheets and expense sheets, review monthly case management logs, assure that caseloads are covered when an employee is on vacation or other leave.
- Serves as the OPG Director in the Director's absence

Components of Supervision

Supervisors and guardians should have regular, recurring appointments set up for in-depth discussion, guidance and support. The frequency may vary depending on the circumstances, but formal supervision should occur at a minimum of once a month. Supervisors should make themselves available for more frequent communication and problem-solving as issues arise. Guardians own some of the responsibility for maintaining a regular supervision schedule and for contacting their supervisor when they need help, to notify the supervisor of significant events or problems, or to share when something wonderful happens.

The following are specific areas in which the supervisory staff will provide direction, supervision, and support to the guardians they supervise:

- Review of case logs regarding client contacts
- Oversee the timely completion of documentation requirements (i.e., case notes, annual reviews, Probate Court reporting)
- Overview and monitoring of electronic/paper case files

Supervisors will follow the guidelines suggested below when meeting in-person/virtually with the individuals they supervise:

- Discussion about the guardian's caseload-How is it going? Are their stressors/concerns? What are they proud of?
- Discuss, review/approve work schedules, use of leave time for vacations, sick leave and on-call status.
- Discuss the guardian's professional goals, plans and training opportunities.
- Plan/schedule for next supervision.
- At times, a guardian may encounter problems working with a provider staff, family member, community service agency, etc. The supervisor is available to assist the guardian to resolve any conflicts and attend meetings with the guardian if requested.

- Periodically accompany guardians on in-person visits.

Guardianship in a State of Emergency

Expectations of public guardians may change when there is a State of Emergency or other disruption in normal activities. The frequency and type of visits and contacts required may be temporarily altered to address the relevant health and safety concerns. Guardians will be notified of these changes by their supervisors and/or by email from the Director.

Conflicts Of Interest in Guardianship

In order to maintain confidence in the OPG, it is essential that guardians avoid both the appearance of and actual conflicts of interest. To be effective, the guardians must convey that their sole professional loyalty is with the individual for whom they are guardian.

Conflicts Between Individuals Under Guardianship

The guardian should be alert to potential conflicts of interests between individuals on their caseload. Examples of such conflicts are:

- An individual is suspected of abusing or committing a crime against another.
- Two individuals are involved in a personal or sexual relationship, which may be exploitive to one of them.
- Two individuals are in a dispute about parental rights or paternity of a baby.
- Two individuals live or work together, and the actions of one are creating problems for the other.
- Two individuals are married/in a relationship and their individual needs may conflict with one another.

Any such potential conflict should be discussed with the Regional Supervisor or Director as soon as the guardian becomes aware of it. Ordinarily, one of the two individuals will be assigned to another guardian, at least on a temporary basis. **See Part Fifteen: OPG Programmatic Guidelines/ Caseload Assignment Considerations/ Transferring a Person to another Guardian.**

When two different guardians are representing individuals who have conflicting interests, guardianship staff (including supervisors) need to be careful about sharing confidential information.

Conflicts Caused by Other Jobs or Roles

The guardian should take care to avoid outside work or voluntary activities that will create an appearance of conflict or an actual conflict of interest. For example:

- The guardian should not undertake any work for pay by an agency or shared living provider who serves any of the people for whom they are guardian. An exception may be made in unusual circumstances where the guardian was involved in the work prior to being hired as a guardian. This should be disclosed to the Regional Supervisor and Director. In general, the guardian should avoid all other work that involves payment with funds from DAIL.
- The guardian should not serve as private guardian for any person who receives services from an agency that he or she works with. An exception can be made for a member of the guardian's own family. This should be disclosed to the Regional Supervisor and Director.
- Any work that involves payment with funds from DAIL by any household member of the guardian must be disclosed to the Regional Supervisor and Director. If the household member provides paid services to a person under public guardianship, supervision will be adjusted so that the supervisor of the guardian is different for the supervision for the guardian of the person.
- The guardian must avoid using their position to act or advocate in a way that could give the appearance of being motivated by sustaining the caregiver's income or best interest.
- Guardians considering outside employment should consult with their agency/department personnel officer first. More information can be found here: [Moonlighting Policy](#)

If a guardian becomes involved in a close personal relationship with a person who is a staff of an agency, caregiver, family member or a Shared Living provider, this should be discussed with the guardian's supervisor/Director. Ordinarily, the caseload will be readjusted to avoid any appearance of conflict of interest. Under **no** circumstances will a guardian be involved in a sexual relationship with anyone under public guardianship.

Political Activity

Office of Public Guardian staff should not ask clients, contracted providers, or agency staff to sign petitions, make contributions to causes, support political positions or candidates, or support religious groups.

Guardians, like all state employees, are barred from political activity during work hours. State employees have the same freedom of association and expressions and the right to engage in political activity as all Vermonters outside of work hours.

If a guardian is going to take time off to engage in political activity during work hours, they must request leave in advance. More information can be found here: [Political Activity](#)

Conflicts Of Interest Pertaining to Property and Money

A guardian should not sell, transfer, convey, or encumber real or personal property or any interest therein to themselves, a spouse, co-worker, employer, an agent, or attorney, or any corporation or trust in which the guardian has a substantial beneficial interest unless the transaction is approved by the court after notice to interested persons and others as directed by the court.

Under **no** circumstances should a guardian accept money from a person under guardianship for personal use. Under emergent circumstances (i.e., hotel room, mattress) and with the approval of the supervisor/Director, the guardian may advance their personal funds, which have been approved for reimbursement through the Guardianship Services Fund, or funds that are reimbursed from a client's representative payee account. See [OPG Guardianship Services Fund Guidelines](#) for examples.

Documentation Requirements

Demographic Information

Demographic Information must be kept up to date in the electronic case management system to reflect current address, service agency, family information and current guardian.

Case Logs

Case Logs are a programmatic expectation to document the monthly type of contact the guardian has with the individuals on their caseload. The guardian should have monthly contact with each person on their caseload. They should have an in-person contact or a home visit at least every other month with a minimum of four home visits per year. The caselog must be completed by the first Monday of the following month

Contact should be coded as follows:

- Home Visit-individual must be present.
- In-Person-with individual but not at home.
- Video Visit-includes video with team and individual, video home visits, doctor's appointment or just individual
- Phone Visit-includes phone call with team, doctor's appointment, phone home visit, or just individual.
- Other-phone, email, video or other contact about individual without them present.

With such large caseloads, it is easy to lose track of the frequency and recency of visits for each person, and case logs serve as a visual reminder of the guardian's adherence to program contact guidelines.

Case Notes

Case Notes are completed in the electronic case management system and keep track of what has happened with the individual and what actions the guardian has taken. Case notes should include information about the guardian's assessment of the person's current well-being, needs, services and supports that need to be monitored or referred and any actions taken by the guardian in the current or upcoming month. The goal of case notes is to keep track of what has happened, what you did about it and be able to pass this information to another guardian who may need to take over the case for any reason. Case notes may be subpoenaed or requested as part of an

investigation, and they should be written accordingly. Write every case note with the image of yourself reading it aloud in court with the individuals referenced in the note sitting in the courtroom.

Case notes are ideally written soon after a contact, but the minimum requirement is monthly and should be entered by the 15th of the following month. They need to document guardian actions on behalf of the individuals they serve based upon the guardianship powers outlined in each person's court order. Each case note should contain the following information:

- Date of Contact
- Type of Contact
 - Home Visit-individual must be present.
 - In-Person-with individual but not at home.
 - Video Visit-includes video with team and individual, video home visits, doctor's appointment or just individual
 - Phone Visit-includes phone call with team, doctor's appointment, phone home visit, or just individual.
 - Other-phone, email, video or other contact about individual without them present.
- Names of team members, family, medical professionals, etc. who were present or participated in the contact.
- Information about your assessment of the person, their needs, services and supports that you refer them to or monitor, and any actions you have taken or plan to take on their behalf. The guardian should ask themselves the following questions:
 - Do I need this information?
 - Does the next guardian need this information?
- It is not practical or useful to cut and paste every email regarding a person into the case notes. Only do so if it is a very important email and specify that it is an email to avoid confusion.

Title 18 Required Documentation

All Title 18 forms are located in the electronic case management database.

90-Day Assessments

90 Day assessments of individuals new to guardianship are based on the date of the court order. The assessment highlights area of importance that the guardian should initially focus on. They are completed and retained in the electronic case management system and must be reviewed and signed by the guardian's supervisor upon completion.

Annual Reviews

Annual Reviews are required by [18 V.S.A. §9314](#). They are due on the anniversary date of the court order. The Annual Review summarizes the highlights of the past year, actions taken by the guardian, and recommendations as to whether to continue, modify, or to terminate guardianship in the upcoming year. They are completed and retained in the electronic case management

system and must be reviewed and signed by the guardian's supervisor upon completion. Annual reviews do not have to be submitted to the Family Court unless requested. Be mindful that this document can be viewed by others so it is important to be fact based, objective and written in a professional manner.

An annual review should paint a picture of who the person is as an individual as well as contain information about the guardians' actions on behalf of the individual for the past year in each of the areas assigned by the court. The document should highlight the efforts of the guardian to assist the individual to meet their goals/dreams, major events or decisions made on behalf of the individual and an annual reassessment of the individual's legal status to determine if modification or termination of guardianship is warranted.

Annual Review Categories:

- General Supervision – Comment on the areas of general supervision (as applicable) including choosing or changing residence/placement, care, habilitation, education and employment. Include frequency of contact and other actions conducted during the year on behalf of the individual.
- Contracts – Report any contracts you signed on behalf of the individual including the ISA.
- Legal/Judicial – Describe any legal or court activities during the past year.
- Medical/Dental – Report on medical and dental care the individual received during the year. Note any chronic medical conditions, major illnesses, end of life decisions and anything noteworthy about the physical, mental or dental health of the person.

Availability of a responsible adult for assistance in decision making-Are there any relatives or friends that could be accessed for Supported Decision Making as an alternative to guardianship or who might be appropriate as a private guardian?

Guardianship goals for the coming year – Describe the guardian's goals for the individual for the upcoming year and what you will pursue on their behalf. Goals can be specific (guardian will obtain a certified copy of a birth certificate) and general (guardian will monitor health, safety and well-being through monthly contact including home visits at least every two months, regular communication with Service Coordinator, review of medical documentation and attendance at team meetings.)

Indicate on the annual review if guardship should continue, modified or terminated.

Be mindful that this document can be viewed by others (including judges) so it is important to be fact based, objective and written in a professional manner.

Title 14 Required Documentation

All Title 14 Adult Guardianship forms are located here: [Vermont Judiciary Probate Forms](#).

Probate court documents are required to be electronically submitted on the platform [Odyssey File & Serve \(tylertech.cloud\)](https://tylertech.cloud) The directions for using this site are included when a guardian initially signs up. If a guardian requires additional assistance to file court required documents, contact the Administrative Services Coordinator or the Intake and Diversion Specialist.

Not all interested persons involved in a guardianship case have access to email. If an interested person does have an email address associated with the court, it will be listed on the initial guardianship petition form. Interested persons are required to receive copies of everything that is filed with the court (annual status reports, inventory, motion to move a person to a new residence, etc.) The guardian will need to mail a copy of filings to interested persons when necessary. The Certificate of Service form must also be filed with any court documents so that the court knows that the interested party or parties have received a copy of the documents. When submitting a motion or other court document, do not submit it as confidential. The only items that should be submitted as confidential are the guardianship evaluation or psychological evaluation.

The Title 14 require forms are as follows:

Initial Inventory for New Financial Guardianship Cases

An initial [Inventory](#) of an individual's estate and financial resources is due within 30 days of the guardianship appointment if the order includes financial guardianship power. In some cases, a guardian is appointed on an emergency, temporary basis before the permanent appointment. The inventory should be based on the date of the first financial guardianship appointment, which may be the date of the emergency temporary appointment and include all real and personal property of the individual. Inventories can include household items and collectibles, but only if these items have significant value (things that could be sold for yard sale like prices need not be included). Items that would normally have significant value but either have very little or no value due to their condition (like cars, houses, some collections) should be listed but their actual or likely low value noted.

It sometimes takes longer than 30 days to discover all assets. Anything discovered after the initial inventory is submitted can usually be noted in the first annual account. If the discovered asset is substantial, it may make sense to notify the court.

Annual Report

On an annual basis the [Guardians Annual Report on Adult Guardianship](#) must be filed with the appointing Probate court. Most courts require the annual report on the anniversary of the guardianship appointment. Some probate courts; however, are moving towards having a single reporting date. Read the guardianship order in order to understand what the issuing court expects. This report should include progress on the condition of the person in all areas of guardianship, the manner in which the guardian carried out their duties and the guardian's opinion regarding the continued need for guardianship.

Summary of Account

A [Summary of Account for Adult Guardianship](#) of the income received, and expenditures made from the individual's funds and assets must be filed annually if the order includes financial guardianship power. If Social Security is the only income, an [Accounting When Only Income is Social Security Benefits](#) simplified form can be submitted.

Final Account/Settlement of Accounts

After a person's death, if a successor guardian has been appointed, or if the court finds that the person no longer needs a guardian, a final [Summary of Account for Adult Guardianship](#) must be submitted to the court if the order includes financial guardianship power. The form is the same as the one used for the annual account; the guardian simply checks the final account box instead of the interim account box.

Once the final account is approved, if there are still assets, the guardian should turn over those assets to whoever is now in charge of them, either the successor guardian, the person themselves, or the executor of the estate. After getting the appropriate court orders showing who should get the money, the guardian must get a [Receipt](#) Form signed by the successor guardian or executor showing that the money has been turned over to them.

Once the money has been turned over, the guardian submits the signed receipt along with a final report and request for discharge.

If there are no assets, the [Adult Guardian Closing Report and Discharge Order](#) can be submitted with the final account.

If there are assets remaining in the account after all bills have been paid, consult with supervisor/Director and AAG when necessary.

Other Commonly Required Title 14 Forms

[Certificate of Service](#) – This form should accompany all submissions to the court. It informs the court that the guardian has sent a copy of the form(s) being submitted to all interested parties who were listed on the original petition for guardianship. If an interested party does not have access to email, the guardian is responsible for mailing copies of all forms submitted.

Motion Forms – The court requires a motion form for a variety of actions being requested by the guardian such as [Motion for Permission to Change/Continue Residential Placement](#) , [Motion to Terminate or Modify Adult Guardianship](#), and [Motion for License to Sell or Convey Real Estate or Personal Property](#)

Additional Title 14 Required Documentation

Additional court required documentation as indicated in specific circumstances such as consenting to surgery or End-of-Life decisions. In these situations, the guardian will need to write a letter to the court outlining the emergent medical issue, provide medical documentation

for the court to review and ask for permission to make a decision on behalf of the individual. When in doubt, call the court to explain the situation and ask what documentation the court may require. The court may order a hearing or issue an order based on the documentation.

OPG Case Files and Record Retention Requirements

Case files document the guardian's work and supplement the guardian's memory with a written record. A well-organized file (paper or electronic) is a valuable tool for a guardian. When a guardian makes a decision that may later be questioned, the case file record provides documentation of the decision and its rationale, i.e., the guardian considered all information and available options prior to making the decision. When the guardian is not available for consultation, the case file provides a case history and background to assist whoever covers for the absent staff. And, when the guardianship is transferred to another person, the case file serves as a critical source for historical and current information.

The guardian is responsible for maintaining the file as a functional working document whether it is in paper or electronic form. With a paper file, this means periodically weeding out obsolete, superseded or duplicate documents, and assuring that essential documents are included in the file. It is strongly recommended that new files be set up in the electronic case management system. The continued utilization of paper case files is not encouraged. The use of electronic records allows the documents to be accessed by any guardian in need of the same, regardless of where the guardian is located. Hard copy files limited accessibility.

Electronic Case Files

The following naming convention should be used for saving client documentation to the electronic case management record. Each document should be uploaded to the correct folder and titled in description field as indicated here: Document Type and Date MM-DD-YYYY.

Examples of document type to use as the description are listed below each folder type. Documentation should be uploaded as PDFs. Additional information should be included for all court documentation, see notes.

OPG Correspondence

- Consents
- Appeals
- Advocacy
- Letter To/From re:...

OPG Emergency Fact Sheet

- EFS
- Resident Face Sheet

OPG End-of-Life

- COLST
- POLST (NH version of COLST)

- DAIL Ethics Committee presentation/decisions
- Hospital Ethics presentation/decisions
- Advance Directives (for people with preexisting advance directives)

OPG Evaluations

- Psychiatric
- Eligibility
- Psychosexual
- Historical
- Driver Rehab
- BTS Records
- ABAS
- Discharge Summary: Facility Name (Psychiatric)

OPG Financial:

- SSA
- Medicaid
- Medicare
- Insurance
- Trust
- STABLE
- Income/Employment
- Taxes
- Renter's Rebate

OPG Funeral/Burial Accounts:

- Prepaid Account
- Obituary
- Cemetery Plot

OPG Guardianship Orders/Guardianship Evaluations:

- Guardianship Orders
- Guardianship Evaluation
- Order for Guardianship Evaluation and Petition
- Act 248 Orders

OPG Identification

- Birth Certificates
- Naturalization documentation
- Health Insurance Cards
- Driver's License/Permit
- Non-Driver ID
- Social Security Card
- Photo

- DD Form 214- Certificate of Release or Discharge from Active Duty
- Passport

OPG Incident and APS Reports

- Critical Incident Reports
- Incident reports
- APS Reports
- APS Findings
- APS Investigation Reports
- APS Appeals

OPG Legal

- Civil
- Criminal
- Motion (motion type and status)
- Entry Regarding Motion (motion type and status)
- Notice of Hearing (date of hearing)
- Entry Order

*For all court documentation include the type, unit, division, client name, and date of hearing date in the document title.

Example:

Folder: OPG Legal

Description: Probate Notice of Hearing Rutland Unit Probate Division Doe, Jane FOR December 31, 2022

OPG Medical

- General
- Neurology
- Psychiatry
- Ob-gyn
- Cardiology
- Endocrinology
- Cancer
- Surgery
- Dental
- Optometry
- Urology
- Dementia
- Health Portal Login
- Discharge Summary: Hospital Name

OPG Old Case Notes

- Date Range (example: 7/1999 – 12/2013)

OPG Probate Court Reporting

- Inventory
- Motion to Change Residence
- Statement of Assets and Income
- Summary of Account
- Closing Report

OPG Property

- Motion to Sell Property
- Motion to Mortgage
- Mortgage Documents

OPG Service Plans

- ISA
- IEP
- Individual Plan of Care
- Letter of Agreement (SFI case)
- Behavior Support Plan
- Shared Support Plan
- Negotiated Risk Agreement
- Peggy's Law Disclosure
- Home Provider Notes
- Needs Assessment

At a minimum an individual's electronic case management record should contain the following documents (even if the guardian maintains a paper file):

- Comprehensive/Guardianship Evaluation
- Guardianship Order
- Act 248 Order
- Emergency Fact Sheet/Resident Face Sheet
- Birth Certificate
- Naturalization documentation
- Health Insurance Cards
- Driver's License/Non-Driver's ID
- Social Security Card
- Photo
- DD Form 214- Certificate of Release or Discharge from Active Duty
- Passport
- COLST
- Advance Directive
- Prepaid Funeral Account
- Cemetery Plot
- Evaluations (psychological, psychiatric, eligibility, psychosexual, etc).

- Probate Court Reporting

Paper Case Files

As mentioned previously, it is strongly recommended that new files be set up in the electronic case management system. The continued utilization of paper case files is not encouraged. However, if a paper file is kept, it should contain the following (when relevant to the powers held):

Section One: Information for Quick Reference

- Emergency Fact Sheet/Resident Face Sheet that includes contact information for the individual, home provider (if there is one) and service coordinator/social worker
- A recent photo of the individual
- Advance Directives
- Ethics Committee presentation and decision
- Current guardianship order
- Court ordered, Comprehensive/Guardianship Evaluation
- Other current court orders, such as RFA's; custody documents; conditions of release; visitation orders; Act 248 order, etc.
- Birth certificate
- Marriage certificate; divorce documents
- Funeral and burial arrangements, if any
- Contact information for relatives, etc. if not included on the emergency fact sheet/resident face sheet

Section Two: Annual Reviews, Assessments and Court Reporting

- 90-Day Assessments (Title 18)
- Annual Reviews (Title 18)
- Initial Inventory (Title 14)
- Annual Report (Title 14)
- Summary of Account (Title 14)
- Any other court reporting

Section Three: Medical

- Medicaid, Medicare, and/or other health insurance cards
- Current prescribed medications, including psychiatric
- Results of medical tests
- Correspondence with medical professionals
- Medical assessments
- Hospital records and discharge summaries
- Medical history
- PT/OT, speech therapy, etc. Evaluations

- Any other medical records

Section Four: Service Plans

- Current ISA, IEP, ILA, plan of care, or other service plan
- Service funding
- Needs assessment, periodic reviews, behavior support plans
- Community Safety Plan
- Peggy's Law disclosure
- Communication plan
- Vocational rehabilitation plan or employment information, etc.

Section Five: Financial Information

- Tax documents
- Benefit information such as Social Security or Medicaid application, and notice of benefits
- Prepaid burial contract
- Life insurance policy
- Other financial contracts, documentation of loans, cell phone contract,
- Representative payee contact information
- Current lease
- Trust documents
- Bank statements
- STABLE account information
- Any other financial records

Section Six: Case File Notes, Critical Incident Reports

- Old casenotes (which predate the electronic case management system)
- Critical Incident Reports (which predate the electronic case management system)

Section Seven: Important Correspondence

- Use this section for any correspondence that does not fit into a category above

Section Eight: Personal Section

- Photos, artwork, poems, awards
- DCF relevant records
- Family and social history
- Person's story

Record Retention and Disposal

A schedule for retention and disposal of guardianship records has been developed by the Vermont State Archives and Records Administration [SPECIFIC RECORD SCHEDULE FOR: Disabilities, Aging and Independent Living, Dept. of \(vermont.gov\)](#) . Records may not be disposed of sooner than the time periods in the schedule. In short, paper records should be organized and then given to the Administrative Services Coordinator after a person dies or leaves guardianship and they will implement the retention and disposal.

Privacy and Confidentiality

Privacy

A guardian is authorized to share most information about the person with anyone you choose. In using this authority, the guardian should be guided by the wishes of the person: Would the person under guardianship want the person I am telling to have this information?

Thus, for instance, the guardian might choose to tell a wide circle of people that an individual's birthday is coming up so that there can be a celebration, but the guardian might be extremely discrete about telling anyone the age of an older person who is sensitive about their age.

Where possible, a guardian will respect a person's preference that a certain family member or certain staff member does not receive personal information. Remember that opinions about privacy tend to be individual. For instance:

- One person may not want to share their phone number, while another may publish it in a public directory
- One person may consider sexual fantasies very private, while another may discuss them fully with trusted friends
- One person may tell the world about their aches and pains, while another may view health information as highly personal

A guiding principle of the Office of Public Guardian with regard to the general topic of privacy is to presume that information should not be shared unless the individual wishes for the information to be shared, or if the withholding of information would have a negative and serious impact on the person, affecting their health and safety. In general, a guardian should always ask the person first, unless in the middle of a major medical crisis.

Confidentiality

In general, personally identifiable information should not be discussed with your friends, co-workers (except Office of Public Guardian staff when appropriate), or family. Besides appearing unprofessional, you have no control over what they might do with the information.

Mandated Reporting

An exception to maintaining confidentiality is the guardian's obligation to report all suspected situations of abuse, neglect, or exploitation of a child, disabled individual, or older adult, even

though the information was given to you by the individual with an expectation of confidentiality. In such situations, the guardian should explain to the individual that they respect their privacy and in most situations everything the individual shares in confidence will be private; however, the law requires that information about the situation be reported.

More information about the requirements for mandated reporters for vulnerable adults can be found here: [Mandatory Reporting | Division of Licensing and Protection \(vermont.gov\)](#) and for children can be found here: [Mandated Reporting In Vermont | Department for Children and Families](#)

Health Insurance Portability and Accountability Act ([HIPPA](#))

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) is a federal law that required the creation of national standards to protect sensitive patient health information from being disclosed without the patient's consent or knowledge. The Privacy Rule standards address the use and disclosure of individuals' health information (known as PHI "protected health information") by entities subject to the Privacy Rule. DAIL employees are required to follow these standards. A major goal of the Privacy Rule is to ensure that individuals' health information is properly protected while allowing the flow of health information needed to provide and promote high quality health care and to protect the public's health and well-being. The Privacy Rule strikes a balance that permits important uses of information while protecting the privacy of people who seek care and healing.

Any instances of sharing unauthorized PHI must be reported immediately to the Director and the DAIL HIPPA Privacy and Security Officer's by following the instructions on the [Reporting Privacy & Security Violations SharePoint page](#).

Sharing Case Records

All case files shall be considered private and confidential. They must be kept secure and protected against loss, damage, or unauthorized access. Paper case files should be only be identified by the individual's initials and not their full name.

A guardian should have a locked cabinet or locked room where paper case files are stored. Electronic case files are protected by security systems that have been put in place to keep information confidential. In a State of VT office, case files should be stored in a place that cannot be accessed by members of the public. In a home office, records should be stored in a location that cannot be accessed by other members of the family or visitors to the home.

If a guardian transports a paper case file or documents from their assigned guardianship office or another location, they must use the utmost discretion in handling the file or documents. Paper case files and documents should never be left in an unlocked car or room when the guardian is not present, or in any location where the individual's name/file might be read by a passerby. If it is necessary to leave a paper case file or documents in a vehicle, place the file/documents in a bag, in the vehicle's trunk, or in a location otherwise shielded from view.

The guardian is authorized to share the contents of a person's records, in certain circumstances, if the purpose of sharing the record content is to benefit the person. Examples are a review of medications or other medical treatments; updates to the ISA; annual benefits review for eligibility, etc. The distribution of court ordered guardianship evaluations is restricted by the guardianship statutes. Any request for the guardianship evaluation by service agencies, law enforcement, lawyers, family etc. must be reviewed and approved by the Director of OPG.

In certain circumstances the client case record should not be shared or released unless the guardian has consulted and received approval from the Director of the Office of Public Guardian or the AAG. This applies to requests for information from public safety/law enforcement officers and/or their investigators, APS and DCF staff, and other investigative bodies.

Similarly, the guardian should not provide records to an attorney or any court in response to a subpoena without consulting with the AAG. Particular caution should be used when sharing records that document the person's disability, any behavior(s) that could be considered criminal, or documentation that an individual has a history of false reporting until the guardian clearly understands how the information will be used.

The guardian must assure that the person authorized access to the record or specific information in the record understands the confidential nature of the records. If there is any question about whether a record may be released, the guardian must consult with their supervisor, the Director of the Office of Public Guardian and/or the AAG.