



Office of Public Guardian Procedure Manual

July 2013

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

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TABLE OF CONTENTS

PART ONE: Introduction to Guardianship	1
A. Purpose of Manual	1
B. Mission and Philosophy of Vermont Office of Public Guardian.....	1
C. Mission and Values of the Agency of Human Services	2
D. General Ethical Principles of Guardianship Decision-Making.....	3
PART TWO: Guardianship and its Alternatives.....	4
A. Overview of Guardianship.....	4
B. Types of Guardianship (including statutory references).....	4
C. Legal Power of Guardianship	5
D. Alternatives to Guardianship	5
E. Advance Directive for Health Care.....	8
F. Health Care Agent and Guardianship	9
PART THREE: Guardianship Processes (Probate & Family Court).....	10
A. Due Process Protections.....	10
B. Petition/Hearing Process	10
C. Surety Bond	14
D. Authority and Commissioner’s Designation.....	15
E. Working with Department of Disabilities, Aging and Independent Living (DAIL) Attorneys	16
PART FOUR: Rights of Individuals Under Guardianship	17
PART FIVE: Role of the Public Guardian	19
A. Guardian as Surrogate Decision-Maker.....	19
B. Guardian as Advocate	19
C. Substituted Judgment.....	19
D. Best Interest	19
E. Informed Consent.....	20
F. Decision-Making Process	20
G. Least Restrictive Alternative.....	21
H. Promoting Growth and Self-Determination.....	21
I. Guardian’s Relationship with Family and Friends	22
J. Guardian’s Relationship with Service Providers and Consent	22
K. Monitoring and Court Supervision	26
L. Request for Change of Guardian.....	26
M. Individual Who Wants to Modify or Terminate Guardianship.....	27
N. Conflict of Interest	27
O. Privacy and Confidentiality	30

PART SIX: Fiduciary Principles in Title 14 Guardianship	34
PART SEVEN: Guardianship of the Person	35
A. Promoting the Person’s Wellbeing	35
B. Abuse, Neglect, and Exploitation	35
C. Improper Care	38
D. Communicating with the Person	39
E. Frequently Encountered Situations/Issues	39
F. Person’s Residence and Moving a Person	43
G. Addressing Emotional and Behavioral Issues	44
H. Medicaid Qualifying Trusts, Benefits, and Resources	45
I. Person’s Medical Status	49
J. Arrest and Incarceration of Person	54
K. Interface of Act 248 and Public Guardianship	55
L. Death and Final Arrangements	57
M. Miscellaneous Procedures	58
PART EIGHT: Guardian of the Estate	65
A. Communicating with the Person	65
B. Marshaling the Estate	65
PART NINE: Guardianship Modification or Termination	66
A. Title 14	66
B. Title 18	67
PART TEN: Documentation and Record Keeping Requirements	68
A. Case File Records	68
B. Case Record Retention and Disposal	70
PART ELEVEN: Orientation, Training and Supervision	72
of Guardians	72
A. Orientation	72
B. Office of Public Guardian Training	74
C. Agency of Human Services Policies	75
D. Office of Public Guardian Supervision	76
PART TWELVE: Representative Payee Services	78
A. Role of Office of Public Guardian’s Representative Payee Services	78
PART THIRTEEN: Caseload Assignments / Conflict of Interest	81
A. Caseload Assignment Considerations	81
B. Maximum Caseload Guidelines	81
APPENDICES	83
Appendix A – Private Guardianship for Mentally Disabled Adults	83
Appendix B – Public Guardianship for Mentally Disabled Adults Age 60 or Over	86

Appendix C – Title 18: Guardianship Services for People with Developmental Disabilities	87
Appendix D – Title 14: Voluntary Guardianship	95
Appendix E – Vermont Advance Directive for Health Care.....	98
Appendix F – Petition for Appointment of Guardian for an Adult Person	106
Appendix G – Statement of Proposed Ward’s Assets and Income	109
Appendix H – List of Interested Persons for a Guardianship	110
Appendix I – Petition to Appoint Voluntary Guardian for an Adult Person.....	111
Appendix J – Petition for Guardianship Services for an Adult with Developmental Disabilities	113
Appendix K – Guardian’s Bond.....	116
Appendix L – Exercise of Consent	118
Appendix M – Maintaining Vermont Medicaid When Living Out-of-State	120
Appendix N – Behavior Support Guidelines	124

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 Guardianship

A. Purpose of Manual

This manual is intended to be a reference guide for the Office of Public Guardian staff and others, which spells out the mission, responsibilities and expectations of Public Guardians. While comprehensive, it is not expected that this manual will provide guidance for every conceivable situation or individual circumstance that may arise. The manual will be reviewed at least annually and updated as needed to capture new or changing information.

B. Mission and Philosophy of Vermont Office of Public Guardian

A guardian is a person appointed by the court to assume responsibility for making decisions on behalf of another person when the court finds that the person is unable to make certain decisions independently. The Vermont Office of Public Guardian, acting under court authority, provides guardianship services for adults with developmental disabilities and for individuals who are aging (60 years of age and over). Public Guardians for people with developmental disabilities are generally appointed through Family Court; Public Guardians for individuals who are aging or people with developmental disabilities with an interested family member or other party willing to serve as a guardian, are appointed by the Probate Court. Emergency guardianships are appointed through the Probate Court.

The mission of the Vermont Office of Public Guardian is to assist and empower people under its guardianship to live their lives to the fullest, and to assist them in making decisions and taking actions in critical life areas.

Public Guardians also seek to diminish the need for Public Guardianship by identifying, training, and assisting private guardians, by encouraging and preparing individuals to make their own decisions, and by developing supportive community resources.

Our goals are in keeping with the overarching mission of the Department of Disabilities, Aging, and Independent Living (DAIL), which is to make Vermont the best state in which to grow old

or to live with a disability ~ with dignity, respect, and independence. We strive to meet DAIL's core principles of service delivery:

- **Person-Centered**
The individual will be at the core of all plans and services.
- **Respect**
Individuals, families, providers and staff are treated with respect.
- **Independence**
The individual's personal and economic independence will be promoted.
- **Choice**
Individuals will have options for services and supports.
- **Self-Determination**
Individuals will direct their own lives.
- **Living Well**
The individual's services and supports will promote health and well-being.
- **Contributing to the Community**
Individuals are able to work, volunteer, and participate in local communities.
- **Flexibility**
Individual needs will guide our actions.
- **Effective and Efficient**
Individuals' needs will be met in a timely and cost effective way.
- **Collaboration**
Individuals will benefit from our partnerships with families, communities, providers, and other federal, state, and local organizations.

C. Mission and Values of the Agency of Human Services

The Agency of Human Services (AHS) has the widest reach in state government and a critical mission: to improve the conditions and well-being of Vermonters and protect those who cannot protect themselves. Whether helping a family access health care or child care, protecting a young child from abuse, supporting youth and adults through addiction and recovery, providing essential health promotion and disease prevention services, reaching out to elder Vermonters in need of at-home or nursing home assistance, enabling individuals with disabilities to have greater independence, or supporting victims and rehabilitating offenders, AHS serves Vermonters with compassion, dedication and professionalism. Within AHS, there are a number of departments including the Department of Disabilities, Aging and Independent Living (DAIL). And, within DAIL, there are a number of divisions including the Division of Developmental Services (DDS) where the Office of Public Guardian is housed.

1. Philosophy and Mission Statement

a. Agency Mission

The Agency of Human Services strives to improve the health and well being of Vermonters today and tomorrow and to protect those among us who are unable to protect themselves.

b. Agency Vision

- The reduction of the impacts of poverty in our state
- The promotion of health, well-being and safety in our communities

- An enhanced focus on accountability and effectiveness in achieving our goals
- The assurance of high quality health care for all Vermonters

c. Agency Values

In 1998, the Vermont legislature codified into law ten outcomes of well being to guide the work of state and community partners across human services and education (3 V.S.A. §3026). These outcomes direct the work of the Agency as a specific articulation of the conditions we hope to create for all Vermonters through the delivery of a robust human services system. Act 68 (the Challenges Bill) of the 2009-2010 legislative session added two additional outcomes.

Outcome 1: Families, youth, and individuals are engaged in their community's decisions and activities

Outcome 2: Pregnant women and young children thrive

Outcome 3: Children are ready for school

Outcome 4: Children succeed in school

Outcome 5: Children live in stable, supported families

Outcome 6: Youth choose healthy behaviors

Outcome 7: Youth successfully transition to adulthood

Outcome 8: Adults lead healthy and productive lives

Outcome 9: Elders and people with disabilities live with dignity and independence in settings they prefer

Outcome 10: Communities provide safety and support to families and individuals

Outcome 11: Vermonters receive affordable and appropriate health care at the appropriate time, and health care costs are contained over time

Outcome 12: Families and individuals move out of poverty through education and advancement in employment

D. General Ethical Principles of Guardianship Decision-Making

It is the philosophy of the Office of Public Guardian that *when making decisions on behalf of a person under guardianship*, as Guardians, 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 each 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.

PART TWO: Guardianship and its Alternatives

A. Overview of Guardianship

Upon turning age 18, all Vermonters are presumed to be competent to make their own decisions and to have a right of self-determination. A parent is no longer considered the guardian of a child once the individual turns 18. Any guardianship for an adult must be authorized by a court. A guardian is a person with the legal responsibility to protect the well-being and rights of another and also has authority to make certain legal decisions for the person.

The current guardianship statutes in Vermont are:

Family Court	Title 18, Chapter 215, sections 9313 – 9317
Probate Court	Title 14, Chapter 111, sections 3091 – 3095

B. Types of Guardianship (including statutory references)

Upon turning age 18, all Vermonters are presumed to be competent to make their own decisions and to have a right of self-determination. A parent is no longer considered the guardian of a child once the child turns 18. Any guardianship for an adult must be authorized by a court.

Private Guardian

Usually a private guardian is an adult family member or friend of the 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.

Public Guardian

A Public Guardian is a state employee who works for the Department of Disabilities, Aging and Independent Living. He or she will only be appointed if the person is in need of a guardian and has no suitable friends or family willing to serve in this role. Guardians specialize in supporting people with developmental disabilities and elders with cognitive impairment. Some guardianships are ordered by a Probate Court and others are appointed by Family Court.

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

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

- Private guardianship for mentally disabled adults (14 VSA) (Appendix A)
- Public guardianship for mentally disabled adults age 60 or over (14 VSA) (Appendix B)
- Public guardianship for adults with developmental disabilities (18 VSA) (Appendix C)
- Voluntary guardianship (14 V.S.A§ 2671) (Appendix D)

A guardianship may be limited or full. Even with a full guardian, a Vermonter retains certain basic rights, such as the right to vote, free speech, and practice religion.

C. Legal Power of Guardianship

If the Court determines that guardianship is necessary, the Judge will appoint a guardian and designate the specific powers and duties for the guardian to assume while promoting the independence of and protecting the best interests of the person under guardianship. Depending on the competency of the individual, the Court may limit the control of the Guardian to very limited tasks or give the Guardian full control.

Ordinarily the Guardian and agency staff will work as a team to support consumer goals, and the Guardian is responsible to ensure the agency staff are aware of the powers granted by the Court.

Guardians are granted guardianship powers to make decisions on behalf of their consumers. Whenever possible, the Guardian encourages consumers to be active in making decisions about their own lives and works to engage team members' support of the individual, as well.

The powers of guardianship in the Probate Court (Title 14 V.S.A) Family Court (Title 18 V.S.A) differ slightly.

The guardianship powers under Title 14 V.S.A are:

- To exercise general supervision over the person under guardianship, including care, choose or change residence, habilitation, education, and employment.
- To give or withhold consent to medical or dental treatment, subject to the provisions of T. 14 VSA §3075, and any constitutional rights of the person under guardianship to refuse treatment;
- To exercise financial supervision over the income and resources of the person under guardianship;
- To approve or withhold approval of any contract, except for necessities, which the person under guardianship wishes to make;
- To approve or withhold approval of the sale or encumbrance of real property of the person under guardianship subject to the provisions of T. 14 VSA §2881, et seq.;
- To obtain legal advice and to commence or defend against court actions in the name of the person under guardianship.

The guardianship powers under Title 18 V.S.A are:

- General Supervision - This includes choosing or changing residence, care habilitation, education or employment, and approving sale or encumbering of real property.
- Contracts - To approve or withhold approval of contracts.
- Legal - To obtain legal advice and commence or defend against judicial actions.
- Medical and Dental - To seek, obtain and give consent to medical and dental treatment.
- The major component not present in the guardianship powers under Title 18 V.S.A is financial. Representative payee services manage this aspect of an individual's affairs.

D. 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, 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 dream
- Be available in crisis
- Be willing to do needed paperwork
- Be a creative advocate
- Keep the individual informed about what you are doing

Often guardianship is not necessary to meet the needs of an individual who is having difficulty handling his or her personal and financial affairs. 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:

1. 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 payment of regular bills, such as telephone, cable, insurance, car payments, rent, or mortgage. Withdrawal limits can put a brake on exploitation and unwise spending. 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.

2. Power of Attorney

A **power of attorney** 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. 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 in such a way that it does not become effective until/unless the person becomes incapacitated. A financial power of attorney should be drafted by a lawyer.

3. 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 disabled person, such as to pay rent

or buy food and clothing. The payee is accountable to the Social Security Administration or other government agency and has to file periodic reports as well as notifying 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.

- a. Representative Payee Services are provided through the Office of Public guardian either by court order or for people for whom guardianship can be prevented if payee services are provided. Chris Dupuis currently provides those services for the Office of Public Guardian.
- b. Representative Payee Services that are available for a fee (currently \$37/month) from the following:
 - Ben Copeland/Jean Middleton
Cares, Inc.
56 Marlboro Avenue
Brattleboro, VT 05301
802-254-4438/802-251-2141
 - Lisa Bailey
Morningside Shelter
PO Box 370
Brattleboro, VT 05301
802-257-0066 ext. 101
lbailey@morningsideshelter.org

4. Trust

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 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, please see Part Seven: Medicaid Qualifying Trusts, Benefits, and Resources.

- a. Lawyers in Vermont who specialize in special needs trusts include:
 - Jay Abramson
1107 Main Street
St. Johnsbury, Vermont
Phone: 802-748-6200
 - Rendal Barlow

111 Pleasant Street
Middlebury, VT 05753
Phone: 802-388-6356

- Jim Caffry
Caffry Law
55 South Main Street
Waterbury, VT 05676
Phone: 802-882-8163
- Aaron Goldberg
233 Pearl Street
Burlington, Vermont 05401
Telephone: 802-651-9000
- Glenn Jarrett
1795 Williston Road, Suite 125,
South Burlington, VT 05403
Phone: 802-864-5951
- Jonathon Secrest
45 Linden Street
Brattleboro, VT 05301
Phone: 802-257-5292

5. Case Management

An active 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), or Area Agency on Aging (AAA).

6. Circle of Support

An informal network of friends and family can often be sufficient to provide the supports and assistance that a person with mental disabilities needs and should be used whenever possible.

E. Advance Directive for Health Care

An Advance Directive is any written communication from an individual, properly signed and witnessed, that speaks about the person's future wishes and instructions for health care. When an advance directive is written, the person is planning ahead for a variety of medical situations that s/he might face. What these situations have in common is that the person will have lost the ability to think and speak for him or herself, temporarily or permanently. In all these situations, the person can expect to receive care necessary for comfort and dignity. But, when the doctor considers treatments to fight disease and prolong the person's life, he or she will turn to the Advance Directive for guidance. The booklet, "Taking Steps: Planning for Critical Health Care

Decisions” written by the Vermont Ethics Network, includes an Advance Directive form as well as guidance to fill out the form. (Appendix E)

The guardian should actively investigate whether the person has executed an Advanced Directive. If one exists, the guardian should ensure that it is followed. This will necessitate informing the person’s physician and caregivers of the existence of the Advance Directive and closely monitoring the care being provided should the individual become terminally ill.

(Items in italics are adapted from Taking Steps: Planning for Critical Health Care Decisions; Vermont Advance Directive for Health Care; Vermont Ethics Network.)

F. Health Care Agent and Guardianship

When you make medical decisions for someone else, you are acting as a *health care proxy*, which is the general term used for a person who makes decisions for someone else.

In Vermont, there are three kinds of health care proxies:

1. Health Care Agent

A relative or friend has signed a legal document called an *advance directive* designating a person to make health care decisions for him or her in case something happens. Some people call this a *durable power of attorney for health care*. The person named in an advance directive to make medical decisions for someone else, you are a *health care agent*.

2. Surrogate

Even when nobody has been formally named as health care agent, anyone may still be asked informally to make medical decisions for someone else. Family members or close friends are often the ones who are most familiar with the patient’s wishes and values. This type of proxy is known as a *surrogate*.

3. Guardian

A court may appoint a *medical guardian* and specifically authorizes the guardian to make health care decisions for someone else. A guardian is directly answerable to the appointing court.

PART THREE: Guardianship Processes (Probate and Family Court)

A. Due Process Protections

States provide specific due process protections for the individual who is the subject of a guardianship proceeding. The most basic protections include the right to:

- Notice of the guardianship proceeding
- Being represented by counsel
- A hearing
- Be present at the hearing and all other court proceedings
- Compel witnesses and to confront and cross examine all witnesses
- Present evidence
- Have the need for guardianship proven by “clear and convincing” evidence
- Notice of entry of order
- Appeal the court’s determination

The person always has a right to attend the hearing. Every effort should be made to explain to the person what will happen at the hearing and ensure that arrangements are made to get the proposed person to the hearing. The person also has the right to testify if he/she wants to do so.

The hearing may take minutes or weeks, depending on the court and the complexity of the case. The court receives evidence, including written reports from examining physicians, guardianship evaluators, and oral testimony from others who are familiar with the reasons why a guardianship may be necessary and who is best to serve as guardian.

The attorney representing the individual who is the subject of the guardianship proceeding should be a strong advocate for the rights of the individual. Advice to the individual should be provided in a language, mode of communication, and terms the individual is most likely to understand.

A determination by the court that the individual is incapacitated and in need of a guardian is a legal not a medical finding. This determination is supported by clear and convincing evidence of a developmental disability and/or a functional impairment, which has persisted, or will persist, for a significant period of time.

Once the court determines an individual is legally incapacitated, it has the authority to remove certain rights and perhaps delegate them to the guardian to exercise on behalf of the individual. The person to whom authority has been delegated to exercise the rights and powers on behalf of the incapacitated person is usually known as the guardian.

B. Petition/Hearing Process

The Office of Public Guardian does not file petitions for Public Guardianship under Title 14 or Title 18 (except pursuant to 18 V.S. A. §9303 after being appointed temporary guardian.) DAIL’s Legal Department occasionally files a petition for guardianship in its capacity as counsel for Adult Protective Services.

A petition for public guardianship must be filed in the county where the person who needs a guardian is living. In the cases of private guardianships, the petition is filed where the proposed guardian is living. Guardianship petitions are filed as follows:

Family Court

- Public Guardianship for an adult with a developmental disability (18 V.S.A. §9301 et seq.)

Probate Court

- Public or Private Guardianships for mentally disabled adults over the age of 60
- Private guardianship for a mentally disabled individual who is cognitively impaired or is generally believed to have a developmental disability (14 VSA)
- All emergency guardianship petitions

1. 14 V.S.A. Private Guardianship for a Mentally Disabled Adult

A mentally disabled person for whom guardianship is being sought is generally believed to have a developmental disability and/or to be cognitively impaired.

In many cases, the individual may agree that he or she would like to have a guardian, but the procedures for independent review are followed anyway. This includes the appointment of an attorney for the proposed person, an independent evaluation, and court review of the person's need for a guardian. An involuntary guardianship is initiated through the filing of a petition with the Probate Court by an interested party such as a family member, social worker, or nursing home representative.

Probate Court Form 72 (Appendix F) <http://vermontjudiciary.org/eforms/Pc%20072.pdf>

Probate Court Form 73 (Appendix G) <http://vermontjudiciary.org/eforms/Pc%20073.pdf>

Probate Court Form 75 (Appendix H) <http://vermontjudiciary.org/eforms/Pc%20075.pdf>

The court then orders an evaluation by a mental health or mental qualified developmental disabilities professional (QDDP) of the prospective person, and a report submitted within 30 days. The report must describe the proposed person's abilities and disabilities in detail, and make recommendations about the need for and extent of a guardianship based upon the criteria set out in the law.

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. 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; the guardian ad litem's role does not extend beyond the scope of the proceedings.

The hearing is 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 upon all the evidence presented at the hearing, whether or not the proposed person meets the legal criteria for needing a guardian. If so, an order is issued listing the specific powers and duties of the guardian.

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.

2. Public Guardianship for Mentally Disabled Adults Age 60 or Over (14 VSA)

A Public Guardian may be appointed by the Probate Court for a mentally disabled adult **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 may be appointed. According to 14 V.S.A., "a person in need of guardianship" means a person who:

(A) is at least 18 years of age; and

(B) 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:

(i) significantly subaverage intellectual functioning which exists concurrently with deficits in adaptive behavior; or

(ii) a physical or mental condition that results in significantly impaired cognitive functioning which grossly impairs judgment, behavior, or the capacity to recognize reality.

(2) "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.

(3) "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 invasive solutions to a person's well-being can be implemented.

The procedures for appointing a Public Guardian for a mentally disabled adult age 60 or over are the same as for appointing a Private Guardian including the filing of the same Probate Court forms 72 (Appendix F), 74 (Appendix I) <http://www.vermontjudiciary.org/eforms/Pc%20074.pdf>, and 75 (Appendix H) and following the process as outlined above.

Based on the person's needs, the Probate Court grants the guardian one or more of six guardianship powers:

- To exercise general supervision over the person under guardianship, including care, habilitation, education, and employment.
- 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;
- To exercise financial supervision over the income and resources of the person under guardianship;
- To approve or withhold approval of any contract, except for necessities, which the person under guardianship wishes to make;
- 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.;
- To obtain legal advice and to commence or defend against court actions in the name of the person under guardianship.

Under the supervision of the Court, the guardian maintains contact with the person, monitors any care or services the person may be receiving, and encourages the maximum independence and self-determination of the person.

3. Public Guardianship for Adults with Developmental Disabilities Title 18 V.S.A. §9301 et seq.

To be considered for Public Guardianship, a person must:

- Be a resident of Vermont.
- Be 18 years of age or older.
- Have a diagnosis of developmental disability.
- Require assistance with basic life decisions.
- Have no responsible adult actively assisting the person to make basic life decisions.

Public guardianships for adults with developmental disabilities are heard in Family Court. The person petitioning for guardianship completes a “Petition for Guardianship Services for an Adult with Developmental Disabilities”, which is submitted to one of the fourteen State’s Attorney’s offices located throughout Vermont (Appendix J)

<http://ddas.vermont.gov/ddas-forms/forms-guardianship/forms-guardianship-documents/forms-opg-petition-services-adult-dd>

The State's Attorney (or deputy state's attorney) then completes the form and files the petition with the Family Court for the county where the person is living. Usually, the Family Court appoints an attorney from the Vermont Disability Law Project to represent the individual, and orders the Department of Disabilities, Aging and Independent Living to obtain a comprehensive evaluation to determine whether the person needs a Public Guardian. Typically, the court makes a decision granting or denying guardianship within 60 - 90 days after the petition is filed.

Probate courts can also place an individual with a developmental disability under temporary Public Guardianship if that person needs a guardian and no suitable private guardian can be located.

A court order for Public Guardianship for a person with developmental disabilities can be for limited or full guardianship. The court will only grant guardianship in the specific areas where the person needs a guardian. Vermont law authorizes Public Guardianship for people with developmental disabilities in the following areas:

a. 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

b. Contracts

The power to approve or withhold approval of any contract, by or in the name of the respondent

c. Legal

The power to obtain legal advice and to commence or defend against judicial actions in the name of the respondent

d. Medical/Dental

The power to seek, obtain, and give consent to initiation and continuation of medical and dental treatment

More specific information can be found in Vermont State Statute: [18 V.S.A. §9313 \(a\)](#).

If the Family Court decides the person needs a Public Guardian, it appoints the Commissioner of the Department of Disabilities, Aging and Independent Living as guardian. The Commissioner delegates his/her authority to staff.

4. 14 V.S.A§ 2671 Voluntary Guardianship

Any person at least 18 years of age who desires assistance with the management of his or her affairs, may file a petition, Probate Form 74 (Appendix I) <http://www.vermontjudiciary.org/eforms/Pc%20074.pdf> with the probate division of the superior court requesting the appointment of a guardian. The individual filing the petition specifies the person s/he requests to be appointed guardian. If the petitioner requesting a guardian is unable to appear before the court, the petition must include a letter from a physician or qualified mental health professional stating that the petitioner understands the nature, extent, and consequences of the guardianship and the procedure for revoking the guardianship. After a hearing, the judge finds whether the individual is un-coerced and in need of a guardian, does not meet criteria, or requests a evaluation to determine whether the petitioner understands the nature, extent and consequences of the guardianship requested and the procedures for revoking the guardianship.

C. Surety Bond

It is usual in Vermont for public and private guardians, appointed by the Probate Court, to be bonded. This means that before the Probate Court appoints the guardian, he or she must file a bond, using the Guardian's Bond, Probate Form 79 (Appendix K)

<http://www.vermontjudiciary.org/eforms/Pc%20079.pdf>. The bond stands as an assurance that the guardian will perform the duties according to law. Although being bonded does not require the actual deposit of funds, it may be necessary to have an insurance company act as guarantor for the guardian's obligations. This service can be arranged through local insurance companies at a reasonable fee. The necessity of a bond often depends upon the size and nature of the assets in the guardianship.

For the Office of Public Guardian, a bond is only required for guardianships ordered for elders through the Probate Court.

D. Authority and Commissioner's Designation

For each individual, the rights that have been removed and delegated to the guardian are stated in an order or judgment signed by the court. 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 professionals may require copies of the order to verify areas of authority (i.e., residential and medical decision-making) given to the guardian. Vermont statute 18 V.S.A. § 9313 outlines the duties of the commissioner (guardian) when providing guardianship services. The commissioner designates his/her duties as a guardian to the guardianship services specialist.

18 V.S.A. § 9313. Duties of commissioner when providing guardianship services

(a) 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.

(b) 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:

- (1) Education services for a person with developmental disabilities who is of school age;*
- (2) Residential services for any person with developmental disabilities who lacks adequate or appropriate housing or residential supervision;*
- (3) Medical and dental services as needed;*
- (4) 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;*

(5) Counseling and social services;

(6) Counseling and assistance in the use of and handling of money.

**E. Working with Department of Disabilities, Aging and Independent Living
(DAIL) Attorneys**

In the event that the guardian needs consultation from the DAIL attorneys, s/he will consult with the Director of the Office of Public Guardian explaining the situation and the need for legal consultation. The OPG Director is the liaison with the DAIL attorneys.

PART FOUR: Rights of Individuals Under Guardianship

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 (NGA Standard 8)*
- *Privacy, including the right to bodily privacy and the right to private and uncensored communication with others by mail, telephone, or personal visits*
- *Religious expression in the manner of his/her choice (NGA Standard 10)*
- *Interpersonal relationships and sexual expression (NGA Standard 10)*
- *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*
- *Have the guardian consider the person's person desires, preferences and opinions particularly in regards to ethic, religious and cultural values (NGA Standard 10)*
- *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*
- *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*
- *Request removal and replacement of the guardian, or request that the court restore rights if it can be shown that the person has regained capacity to make some or all decisions*

The guardian also has a responsibility to request that the person's rights be restored when there is evidence that the person has regained capacity.

(Items in italics are adapted from the National Guardianship Association; The Fundamentals of Guardianship: What Every Guardian Needs to Know; pages 17-18.)

PART FIVE: Role of the Public Guardian

A. Guardian as Surrogate Decision-Maker

A guardian is a surrogate decision-maker, an advocate, a coordinator of services, a monitor of services, and a financial manager. A guardian must also have some knowledge of law, medicine, psychology, banking, pharmacology, insurance, real estate, accounting, and human nature.

The fundamental responsibility of the guardian is to make decisions about the person's personal and financial affairs. In doing so, the guardian should exercise the utmost care and diligence, always with the idea of protecting the self-reliance, autonomy, independence and rights of the person. The currently expressed wishes or spoken choices of the person should be given careful consideration.

B. Guardian as Advocate

The advocacy role is an integral part of the guardian's responsibilities because the guardian coordinates the individual's support, care, comfort, and health. The Guardian also monitors the appropriateness of services and ensures that the person receives all entitlements for which he or she is eligible. Areas of advocacy may include quality of personal care, privacy, appropriate, least restrictive living arrangements, employment, access to the community, and entitlements and benefits.

C. Substituted Judgment

The most accepted guiding principle for guardians to use when making decisions for others is the principle of substituted judgment.

This principle requires the guardian or other surrogate to learn as much as possible about lifestyle, behaviors, preferences, and decisions made by the person prior to the incapacity or over time for people who have not had capacity. Taking these factors into careful consideration, the guardian makes decisions that would, as closely as possible, reflect what the person would have decided if s/he were capable of expressing or making the decision. The person's autonomy, values, beliefs, and preferences usually are best protected when the person's own judgment can be substituted in place of the guardian's judgment. (NGA Standard 7)

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 clergy.

D. Best Interest

In some instances, the guardian may not be able to determine what the person would have chosen to do on a particular issue. This may occur when the person can no longer communicate his/her wishes or when there is no history of decision-making because the person had never been competent, perhaps due to a 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.

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

When making a decision based on the best interest principle, the guardian often seeks expert advice from other professionals or special ethics committees. (NGA Standard 7)

E. 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 a judgment of 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 a 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 for him/herself. An individual may have a guardian in only one area, such as medical and dental, leaving him or her able to make all other decisions.

In order to provide informed consent, any individual must have adequate information on the issue, be able to provide the consent voluntarily, and be free from all coercion. If any of these requirements is not met, an informed decision cannot be made. (NGA Standard 6)

F. 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 (i.e., physicians, educators, architects) who provide a service at the direction of the client, the guardian provides direction for the client.

When making decisions on behalf of a person under guardianship:

- *The guardian shall make all reasonable efforts to ascertain the preferences of the person, both past and current, regarding all decisions, which the guardian is empowered to make.*

- *The guardian shall make decisions in accordance with the ascertainable preferences of the person, past or current, in all instances except those in which a guardian is reasonably certain that substantial harm will result from such a decision.*
- *When the preferences of the person under guardianship cannot be ascertained, a guardian is responsible for making decisions which are in the best interests of the individual and which promote the individual's independence and self-reliance.*
- *The guardian shall be cognizant of his or her own limitations of knowledge, shall carefully consider the views and opinions of those involved in the treatment and care of the person, and shall also seek independent opinions when necessary.*
- *The guardian must recognize that his or her decisions are open to the scrutiny of other interested parties and, consequently, to criticism and challenge. Nonetheless, the guardian alone is ultimately responsible for decisions made on behalf of the person.*
- *The guardian shall know the extent of the powers granted by the court and shall not act beyond those powers.*
- *Decisions of the guardian shall promote and protect the civil and human rights of the person under guardianship.*

G. Least Restrictive Alternative

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

In determining the least restrictive alternative for an individual, the guardian must:

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

H. Promoting Growth and Self-Determination

Whenever possible, the individual should be consulted and encouraged to make choices to the extent s/he is able. This may include participation in the decision-making process and perhaps even acting on his/her own behalf in some instances. The individual should be provided with every opportunity to exercise individual rights to the extent s/he is capable.

For example, the area of general supervision includes making decisions related to residence, habilitation, employment, and encumbering property. The individual may be able to independently obtain and maintain his or her own employment. The guardian could let the individual know that s/he 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.

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

I. Guardian's 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 must avoid developing a personal relationship with the individual's family or friends, unless the relationship existed before the guardian was appointed. (NGA Standard 3)

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.

J. Guardian's Relationship with Service Providers and Consent

1. The Court Order

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.

2. When Consent is Required

The areas for which consent is required is dependent upon each individual person under guardianship and is based upon the powers of guardianship for which the OPG is responsible. However, most people with guardians require supervision in all four (Public guardianship) or six (Private guardianship) powers. The section on consent will assume that the guardian has responsibility for all areas. In order to assure that consent is legally given, the service provider staff must be informed that the Guardian is required to give consent in writing for the following:

- Release of information.
- Medical treatment when the medical provider requires written consent from the individual. (Medical and Dental)

- Disclosure consent pursuant to the Health Insurance Portability and Accountability Act (HIPAA). (Medical and Dental)
- Consents required by school authorities, such as field trips or Individualized Education Plan (IEP) approval. (General Supervision)
- Any contract that the individual signs, including application for a marriage license, mortgage, sales contracts, and a rental lease. (Contracts)
- Any formal application for services or a license or benefits such as VA, Social Security, housing assistance, hunting license, etc., for which the individual is required to sign. (General Supervision)
- Any documents involving legal proceedings or legal obligations which the individual is required to sign. (Legal)
- Consents to participate in athletic or community activities if the individual is required to sign an application or consent form. (Contracts)
- Approval for sale of any real or personal property. (General Supervision [Public]/ Sale or Encumbrance of Real Property [Private])
- Consent for the making of purchases beyond basic needs and assuring that income is received and maintained. (Financial [Private]) For people who have public guardians, a Representative Payee oversees the income and resources of the individual unless it is determined that the individual is competent to do so him/herself.

When given the authority to exercise informed consent on behalf of the individual, the Guardian should evaluate each requested decision using the following criteria:

- *Nature of the request and what it means*
 - *Condition(s) necessitating the treatment or action*
 - *Whether the individual has been or should be informed*
 - *Preferences of the person stated currently or prior to the appointment of the guardian*
 - *Expected outcome of the decision*
 - *Consequences, if any, of waiting*
 - *Consequences if the procedure is not done*
 - *Available alternatives*
 - *Risks involved with each alternative*
 - *Medical documentation in support of or in opposition to treatment*
 - *Need for a second opinion*
 - *Information or input from family members or other professionals*
- (NGA Standard 6)*

To exercise these consents, the Guardian needs full information about the individual's preferences, needs, abilities, and resources. (Refer to Appendix L for a sample consent form.) Ordinarily, this type of information is communicated by ongoing, informal communications between the Guardian, the consumer, service coordinators, residential providers, day services providers, and the agency or facility. On occasion, the agency may be aware of special information that is relevant to a consent the Guardian must give. The Guardian and agency should discuss this and assure the information is provided.

Each individual receiving services from Office of Public Guardian has a designated Guardian. If the designated Guardian is not available in an emergency, any other Guardian may act in his or her place.

3. *Notification of Guardian About Important Events or Information*

a. Situations Requiring Immediate Notification

1. Serious or unusual illness.
2. Emergency medical intervention or treatment.
3. Any hospitalization.
4. Death.
5. Emergency termination of residential or day services.
6. Change in composition of home/supports due to death, illness, or other emergency.
7. Emergency behavioral interventions not authorized by the ISA/POC.
8. Unauthorized absence of individual for more than a brief period.
9. Emergency actions to protect a consumer from causing or being subject to injury or harm.
10. Any situation in which the individual may need legal counsel to protect his or her rights.
11. Use of restraint.
12. Personal injury suffered by or caused by the individual, including medication error and hospitalization.
13. Alleged or suspected criminal acts by individual or staff vis-à-vis the individual.
14. Fire, theft, or destruction of property caused by the individual or suffered by the individual.
15. Any incident which you are obligated to report, as a mandated reporter, to Adult Protective Services or the Department for Children and Families (DCF) when someone under the age of 18 is involved.

b. 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:

1. Change of residence/address. When the individual is moving to a residence out of state, a Medicaid Out-of-State form must be completed (Appendix M) <http://www.ddas.vermont.gov/ddas-policies/policies-dds/policies-dds-documents/medicaid-and-out-of-state-treatment>
2. Change of composition of home (non-emergency).
3. Change of employment.
4. Change of medical or dental provider.
5. Out-of-State Travel.
6. Overnight visiting not planned by the ISA.
7. Change of financial benefits or income.
8. Participation in an activity that involves unusual risk (e.g., wilderness camping, riding on the back of a motorcycle).

c. 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. In some situations (e.g., major medication change) which are controversial or risky, the agency should seek prior consent.

1. Major change of medication or initiation of medications.
2. Medical procedures where MD or Dentist does not require written consent.
3. Changes in Individualized Education Program (IEP) or school program.
4. Major life developments such as dating, death of relative, changes in independence activities of consumer, changes in interaction with family or friends.
5. Changes in staffing which may have an effect on the individual's program or state-of-mind.
6. Changes of key staff whom the Guardian would contact for information.
7. Situations which may indicate a need for legal representation or protection.
8. Contagious illness of staff or residents within the house.

4. Monitoring the Person's Support and Treatment

In order to effectively monitor an individual under guardianship, the Guardian should meet with an individual in person at least monthly to ensure that all necessary supports and services are being provided. An "eyes on" view of the individual provides the Guardian with firsthand observations and information. In addition, it is important for the Guardian to facilitate open communication and establish a working relationship with the individual's team. At least monthly, the Guardian must consult in writing or by phone with case managers and/or service coordinators, developmental home or shared living providers. The Guardian has the right to review the individual's medical and agency records at any time.

The Guardian serves as a monitor of the services provided to the individual. To perform this role effectively, the guardian should develop and maintain a working knowledge of the services, providers, and facilities. Guardians must remember that each person has unique needs and desires, which required an individualized POC or ISA to assure those needs are met. In order to truly understand the individual, the guardian must:

- *Assess the individual's strengths and needs*
- *Determine, when possible, the individual's wishes, goals, dreams*
- *Work with the individual's team to identify resources and service providers and arrange for the provision of services*

The Guardian must approve the ISA for consumers under their guardianship. Guardians should participate in development of the ISA/POC, in updates and/or emergency updates so that major changes in the individual's needs or circumstances are reflected in the ISA. Since the ISA is the document that outlines the services that the service provider/agency provide, 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/POC has been approved, consent from the Guardian is not required for activities the staff/agency used to implement the ISA, unless the program or activity specifically requires written consent, such as for a driver's license. The Guardian is responsible to stay informed of the individual's progress for areas outlined by the court order. To do this, the Guardian and service provider/agency will develop an arrangement with the Guardian to support regular and/or timely communication about the individual's progress and welfare.

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

K. Monitoring and Court Supervision

On an annual basis, the Guardian must complete a report or review for each individual served under guardianship.

For clients appointed through **Family Court**, the guardian must complete an OPG Annual Review, which is submitted to the Director or her designee for review and approval. The 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.

For guardianship appointments from **Probate Court**, the guardian must complete and submit to the Court an Annual Accounting/Report.

L. Request for Change of Guardian

1. Requesting a Different Guardian from Individual or Others

Any individual under Guardianship may obtain a change of guardian by calling, writing, or asking for an appointment with the Director of the Office of Public Guardian. If the issue prompting the request cannot be resolved, the first request for a change in guardian will be granted as soon as possible. Upon a second request from the same individual, the Office of Public Guardian Director would have a further discussion with the individual and based upon the concerns, a decision will be made as to whether another guardian is indicated. The individual will be notified as to whether another change in guardianship is accepted or denied within 10 working days.

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 Director of the Office of Public Guardian or the guardian's supervisor. It is possible that such a request would be granted, particularly if the Guardian agrees. Prior to making a change, mediation, supervision, and/or education on the independent role of the guardian may be provided.

2. The Individual Disagrees with a Guardianship Decision

a. 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.

b. 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.

An individual may request a change of guardian at any time by directing the request to the Director of the Office of Public Guardian as outlined in Part Five, Section M: Request for Change of Guardian in this manual.

M. Individual Who Wants to Modify or Terminate Guardianship

If the Guardian agrees, s/he will work together with the individual to write an annual review recommending termination of guardianship. The Office of Guardian will initiate the petition. Alternately, the Office of Guardian may advise the individual to contact the Disability Law Project and will advise the Disability Law Project that we are in support. In addition, if an individual is unsatisfied with his/her guardian, especially when a parent is the guardian, that person will be referred to the Disability Law Project.

If the Guardian cannot support the request to modify or terminate the guardianship, the Guardian will refer the individual to the Disability Law Project and assure that the individual has the support necessary to make an appointment for a private meeting with the Disability Law Project attorney.

N. Conflict of Interest

In order to maintain confidence in the Office of Public Guardian, it is essential that Guardians avoid both the *appearance* of and *actual* conflicts of interest. To be effective, the Guardians must convey that his or her sole professional loyalty is with the individual for whom s/he is guardian.

1. Conflicts Between Clients

The guardian should be alert to potential conflicts of interests between two clients on his or her caseload. Examples of such conflicts are:

- One client is suspected of abusing or committing a crime against another.
- Two clients are involved in a personal or sexual relationship, which may be exploitive to one of them.
- Two clients are in a dispute about parental rights or paternity of a baby.
- Two clients live or work together, and the actions of one are creating problems for the other.

Any such potential conflict should be discussed with the supervisor as soon as the guardian becomes aware of it. Ordinarily, one of the two clients will be assigned to another guardian, at least on a temporary basis. Situations like this should be referred to the Director of the Office of Public Guardian.

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

2. 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 developmental home provider who serves any of his or her clients. An exception may be made in unusual circumstances where the Guardian was involved in the work prior to being hired as a Guardian. In general, the Guardian should avoid all other work that involves payment with funds from DAIL. Any outside work for pay should be disclosed to the Director of the Office of Public Guardian.
- 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 Director of the Office of Public Guardian.
- Any work for pay by any household member of the Guardian must be disclosed to the person's supervisor and the Director of the Office of Public Guardian. If the household member provides paid services to a client of the Office of Public Guardian, supervision will be adjusted so that the supervisor of the guardian is different for the supervision for the Guardian of the client.
- The Guardian must avoid using his or her 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.
- The Guardian should not undertake any outside work, educational obligation, or volunteer obligation, which will interfere with the Guardian's availability to meet the

requirements of the job unless this has been discussed with the Guardian's supervisor, and approval has been given.

- Under no circumstances should a Guardian accept money from a client for personal use.

3. *Gifts, Meals, Favors*

Gifts and favors to and from clients, agency staff, and Developmental Home providers are traditional as expressions of appreciation or affection. The Guardian may give or accept small gifts or favors whose value is less than \$15.00. Giving or receiving large gifts or favors, which could create an *appearance* of conflict of interest, is not acceptable.

If a Guardian becomes involved in a close personal relationship with a person who is a staff of an agency or a Developmental Home provider, this should be discussed with the Guardian's supervisor. Ordinarily, the caseload will be readjusted to avoid any appearance of conflict of interest.

Under no circumstances shall a Guardian be involved in a sexual relationship with any guardianship services client.

4. *Conflicts with the Department of Disabilities, Aging, and Independent Living Priorities or Policies*

Sometimes the interests of a client will appear to be in conflict with a policy or priority of DAIL. In such situations, it is the job of the Guardian to represent the interests of the client. It is the policy of DAIL that there will be no retaliation or negative job action against the Guardian for taking a position that is in conflict with DAIL, if the position is based upon a fair assessment of an individual client's best interests and is consistent with the Guardian's role as guardian.

However, the Guardian must follow DAIL's rules with respect to speaking in public forums, such as the press or the legislature about general policies, and must obtain prior approval from the Commissioner before doing so.

5. *Political Activity and Advocacy*

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, s/he must request leave in advance.

6. *Conflicts Pertaining to Property*

A Guardian should not sell, transfer, convey, or encumber real or personal property or any interest therein to himself, 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.

A Guardian shall not borrow funds from, or lend personal funds to, the person under guardianship unless the transaction is approved by the court or the Director of the Office of Public Guardian. Where necessary, the guardian may advance personal funds which have been approved for reimbursement through the Office of Guardian Fund, or funds that are reimbursed from a client's representative payee account.

7. *Petitions for Guardianship*

The Office of Public Guardian may not be a party in a petition for Guardianship. The one exception to this is after the Office of Public Guardian has been appointed temporary guardian in Probate Court under 18 V.S.A. §9303, it may file a petition in Family Court. This petition is filed by the legal department at DAIL.

This standard does not prohibit Office of Public Guardian staff from advising families and other interested people about how to petition for guardianship and alternatives to guardianship.

O. Privacy and Confidentiality

1. *Privacy*

The free and full exchange of information and the establishment of an effective working relation with a person, family, professionals, and others is based upon trust. To establish this trust it is absolutely necessary to protect sources of information. The act of sharing sensitive information occurs because of the security of confidentiality.

A Guardian demonstrates respect for the privacy of the individual by the way she talks about the person.

As the person's guardian you are authorized to share 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 her 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 his phone number and another may publish it in a public directory
- One person may consider sexual fantasies very private and another may discuss them fully with trusted friends
- One person may tell the world about his aches and pains and another may view health information as highly personal

Rather than developing program rules about what may and may not be disclosed, the Office of Public Guardian approaches the general topic of privacy in a person-centered manner: what information does the individual wish to share and with whom?

2. Confidentiality

In general, personally identifiable information should not be discussed with your friends, co-workers (except Office of Public Guardian staff), or family. Besides appearing unprofessional, you have no control over what they might do with the information.

a. Mandated Reporting

An exception to breaking confidentiality is the Guardian's obligation to report all suspected situations of abuse, neglect, or exploitation of a child, disabled individual, or elderly adult, even though the information was given to you by your individual with an expectation of confidentiality. In such situations, the Guardian should explain to the individual that s/he respects their privacy and in most situations everything the individual shares in confidence will be private; however, the law requires that information about this situation be reported.

b. Investigations and Other Legal Matters

If the person for whom you are guardian is being investigated for abuse in a criminal matter, you owe the individual the same (or greater) protection of privacy and confidentiality that an informed citizen would choose for himself.

- 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 lawyer present;
- Do not release any records except to the person's own attorney without permission from the Director of the Office of Public Guardian or the DAIL legal department;
- Do not tell what you know about the incident (even if you think it is exculpatory) except if you were a direct witness. For instance, you may tell police or an investigator that you actually saw the individual assault someone.

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. Do share information you believe is necessary to protect the person from further victimization or would assist with the prosecution of the individual who perpetrated the crime. If possible, obtain a victim's advocate or Vermont Legal Aid attorney to help the victim decide what

information he or she wants to share. Discuss any release or withholding of information with your supervisor.

c. Case Records

All case record material shall be considered private property of the individual. It must be kept secure and protected against loss, damage, or unauthorized access.

A guardian should have a locked cabinet or locked room where case files are stored. Computer files are protected by security systems that have been put in place to keep information confidential. In a public office, case files should be stored in a place that cannot be accessed by members of the public or by employees who have no need to access the files. 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 removes a client record from their assigned guardianship office, s/he must use the utmost discretion in handling the document. The document must be stored in a secure location when not in use, to ensure and protect the privacy of the individual. Guardianship files 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 client record in a vehicle, place the file in a briefcase, in the vehicle's trunk, or in a location otherwise shielded from view.

The guardian is authorized to share the contents of the client records, in certain circumstances, if the purpose of sharing the record content is to benefit the person. Examples: review of medications or other medical treatments; updates to the ISA; annual benefits review for eligibility, etc.

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 the Director of the Office of Public Guardian and/or DAIL legal counsel.

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 DAIL legal counsel. 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 an attorney representing the Office of Public Guardian. 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.

(Items in italics are adapted from the National Guardianship Association; The Fundamentals of Guardianship: What Every Guardian Needs to Know; pages 19-23, 27, 39)

PART SIX: Fiduciary Principles in Title 14 Guardianship

A fiduciary is a person to whom property or power is entrusted for the benefit of another. *The conduct of a guardian acting in a fiduciary capacity is governed by the following fundamental principles:*

- *The guardian owes undivided loyalty to the ward. The guardian must avoid having any interest, financial, or otherwise, in any business transaction or activity related to the guardianship. In all dealings on behalf of the ward, the guardian's actions and motives must be beyond reproach and open to scrutiny or challenge by any interested person.*
- *The guardian shall not cause a breach of trust. The guardian must not perform an act that is contrary to the duty of loyalty or any act that is beyond the scope of the authority granted by the court. For example, the guardian must not select a nursing home for an individual because the guardian would receive a commission from the facility. Likewise, a guardian should not select a bank or investment advisor for an individual because of personal discounts or favors for the guardian. Relationships developed during a guardianship should not profit the guardian even after the termination of the guardianship.*
- *The guardian has an obligation to keep the ward's assets safe. The guardian should keep detailed records of all transactions and be able to account for the persons assets at all times. The guardian of the estate must act immediately to marshal and secure all estate assets.*
- *The guardian has a duty to take reasonable steps on claims the ward has against others whether they occurred during, or prior to, the establishment of the guardianship. This may entail filing claims or lawsuits against a former guardian, members of the person's family or third parties who many have caused a loss to the person's estate.*
- *The guardian is under a duty to defend any actions that may result in a loss of guardianship assets, unless it is reasonable not to make such a defense. It may not be in the ward's best interest to initiate an action based only on principle when the likelihood of recovery or winning is slight, the expense to the estate is great, and the stress to the ward is significant.*
- *The guardian must maintain the ward's assets in a separate account and not commingle them with any other guardianship accounts or with his/her own personal accounts. This prohibition against commingling several guardianship accounts does not pertain to bank or trust departments.*
- *The guardian must not directly or indirectly buy or sell property from the guardianship to himself/herself, to his/her relatives, staff from agencies, or other associates and shall avoid any potential conflict of interest. If there is any doubt over the propriety of any proposed action, the guardian should obtain court approval for that action.*
- *The guardian must never enter into a transaction wherein s/he will profit in any way. It is the guardian's duty to administer the person's estate to solely benefit the person. The estate should not be managed for the benefit of the guardian or anyone personally or professionally related to the guardian. the guardian should not be designated as the beneficiary on any life insurance policy, or pension or benefit plan of the person unless such designation was validly made prior to the establishment of the guardianship. There may be situation, however, where the guardian may choose to designate that the proceeds of insurance policies be made payable directly to the ward's designated funeral service provider.*

(Items in italics are adapted from the National Guardianship Association; The Fundamentals of Guardianship: What Every Guardian Needs to Know, pages 31, 33.)

PART SEVEN: Guardianship of the Person

A. Promoting the Person's Wellbeing

Guardians have an on-going responsibility to promote the health and well-being of the person. Therefore, the guardian must stay informed about the person's status and needs in order to make decisions that support, encourage, and assist the person's abilities and preferences. The guardian should also explore opportunities in all areas of life important to the person, taking into account the person's interests, age, and abilities.

B. Abuse, Neglect, and Exploitation

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 Adult Protective Services 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 to investigate whether or not abuse, neglect, or exploitation has occurred. It is also the job of the APS team to determine whether or not an individual is "vulnerable" as defined by relevant law.

1. Abuse

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

- a. any treatment of a vulnerable adult which places his or her life, health, or welfare in jeopardy or which results in impairment of health;
- b. 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;
- c. intentionally subjecting a vulnerable adult to behavior which results in intimidation, fear, humiliation, degradation, agitation, disorientation, or other forms of serious emotional distress;
- d. 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);
- e. administration of a drug, substance or preparation to a vulnerable adult for a purpose other than legitimate and lawful medical or therapeutic treatment.

Indicators of possible physical abuse include:

- *Self-reports of abuse or rough treatment (such as being hit, slapped or otherwise mistreated)*

- *Visible bruises, black eyes, welts, lacerations, and other injuries in various stages of healing*
- *Broken bones and skull fractures; open wounds, cuts and other untreated injuries in various stages; sprains, dislocations, and internal injuries*
- *Broken eyeglasses/frames*
- *Laboratory findings of medication overdose*
- *Unexplained weight or hair loss*
- *New onset of confusions or disorientation.*

The Guardian may observe the individual's behaviors that raise the question of possible physical abuse such as:

- *Evidence that the individual 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 upset when bathed, changed, or examined*
- *Bruising in the genital or breast area*
- *Unexplained vaginal or anal bleeding*
- *Torn, stained, or dirty underclothing*
- *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*

(Items in italics are adapted from the National Guardianship Association; The Fundamentals of Guardianship: What Every Guardian Needs to Know, page 33.)

2. Neglect

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

- a. 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;
- b. Not protecting a vulnerable adult from abuse, neglect, or exploitation by others;
- c. 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;

- d. 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 neglect may be:

- *Self-reports of being neglected*
- *Dehydration, malnutrition, untreated bedsores, poor personal hygiene*
- *Unattended or untreated physical or mental health problems*
- *Unsafe living conditions (wiring, heat, or running water)*
- *Unsanitary and unclean living conditions (dirt, fleas, lice soiled bed linens, fecal or urine smell)*
- *Inappropriate or inadequate clothing*
- *Improper access by being locked in or out of residence*
- *Inadequate supervision*
- *Medication improperly administered, missed health care appointments, or failure to follow medical, therapy, or safety recommendations*

(Items in italics are adapted from the National Guardianship Association; The Fundamentals of Guardianship: What Every Guardian Needs to Know, pages 34-35.)

3. Exploitation

Vermont statutes define exploitation of a vulnerable adult as:

- a. Willfully using, withholding, transferring or disposing of funds or property of a vulnerable adult for the wrongful profit or advantage of another;
- b. Acquiring possession, control or an interest in funds or property of a vulnerable adult through undue harassment or fraud;
- c. Forcing a vulnerable adult against his or her will to perform services for the profit or advantage of another;
- d. 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

A Guardian suspecting physical or sexual abuse should look for emotional abuse as well. Indicators of verbal, emotional, or psychological abuse may be:

- *Reports of being verbally mistreated*
- *Emotional agitation with no apparent cause*
- *Isolation*
- *Withdrawn and non-communicative behavior*
- *Expressions of a death wish*
- *Observing a caregiver treating the person as a child, using shame, ridicule, and treating the person with contempt*
- *Isolation from family and friends*
- *Use of very restrictive measures*
- *Unexplained weight loss*

- *Sleep, eating, or speech disorders*
- *Depression*
- *Attention seeking behavior*

(Items in italics are adapted from Vermont Department of Disabilities, Aging and Independent Living, Division of Licensing and Protection, Abuse Definitions.)

C. Improper Care

Any type of abuse may happen when the person is living at home receiving care from family members, friends, volunteers, and informal or formal caregivers. It can also happen when the person is in any type of a group setting.

Assuring that a high quality of care is provided to the individual is an essential responsibility of the guardian. The following are common indicators in identifying poor residential care, neglect, or abuse in long-term facilities:

- *Unanswered call bells*
- *Incorrect use of physical or chemical restraints*
- *Excessive use of restraints*
- *Infrequent or irregular toileting*
- *Frequent urinary tract infections*
- *Diaper use when need is questionable*
- *Urine and other body odors*
- *Poor mouth care as evidenced by odors and crusting*
- *Uncombed hair*
- *Fingernails/toenails long and dirty*
- *Eyeglasses or dentures locked away*
- *Skin breakdown on buttocks or in skin folds*
- *Not offering water to residents; dehydrations, excessive thirst*
- *Dry mouth, eyes sunken, very dry skin, speech problems*
- *Inadequate assistance with feeding leading to poor nutrition*
- *Unappealing food, not enough variety or not enough fluids*
- *Poor staff training*
- *Inadequate supervision of staff*
- *Threats, rough handling, scolding*

How the individual is acting may give further clues that something is not right. Behaviors of the individual may be clues that something is not right, such as:

- *Fear; either general or of a specific caregiver*
- *Being withdrawn*
- *Depression or sadness*
- *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 behavior of the care provider, such as:

- *Individual not allowed to speak for self or see others without the provider's presence*
- *Provider attitude of indifference, anger, or unwillingness to help*
- *Blaming the individual for being incontinent, acting stupid, or being forgetful*
- *Threats, insults, harassment, or other aggressive behavior*
- *History of abusing other dependent people*
- *Alcohol or drug involvement*
- *Flirtatious or coy behavior (may indicate inappropriate sexual behavior)*
- *Isolation of the individual from activities, family members, friends, etc.*
- *Conflicting accounts of incidents*
- *Unwillingness to comply with care plan implementation*
- *Unwillingness to cooperate with other providers*
- *Withholding of affection or security*

D. Communicating with the Person

Effective communication is an important tool. When communicating with the individual, the guardian should:

- *Talk with, not at the individual*
- *Listen carefully to what the individual is saying and to what s/he is trying to communicate*
- *Include the person in the conversation*
- *Never discuss the individual as though s/he wasn't there*
- *Encourage the individual to answer questions that are directed at him or her*
- *Consult with the individual, even on "minor" issues*
- *Include the person in any meetings affecting his/her future*
- *Avoid nicknames and terms which have a childish or disrespectful connotation (boy, girl, gramps)*
- *If the individual is able to tell you what s/he prefers to be called, address him or her by that name.*

The Guardian should model the behavior that s/he expects service providers to follow when communicating with or otherwise relating to the person.

(Items in italics are adapted from the National Guardianship Association; The Fundamentals of Guardianship: What Every Guardian Needs to Know; pages 35-38.)

E. Frequently Encountered Situations/Issues

1. Telephone Access

As a general rule, individuals under Guardianship should have the same opportunities to communicate privately by telephone as other adults. However, the cost and nature of emerging technologies can present problems.

a. Shared Living/Group Home

Shared living homes and staffed residences may have reasonable rules about the hours when telephones are used, but only for the purpose of keeping other house members from being disturbed. Any rules should apply equally to all adults who live or work in the home. For instance, residents should not be barred from talking on the telephone or receiving calls after 9:00 p.m. if staff are permitted to make or receive non-emergency calls after 9:00 p.m.

Any telephone answering machine in a private home should include the name of all adults who live in the home and not just the home provider. (“Hello, this is the home of Jean and Jerry Provider and Mathew Person.”)

Overuse of the phone, which interferes with access for others should be handled like other behaviors that disturb others. The impact of the behavior on others should be explained and alternatives explored, such as a separate line or cell phone. Boredom should be addressed with alternate activities. If a schedule for phone use is adopted, it should apply equally to all household members.

In a shared living home, an individual should have access to the house phone equal to the access of any other house member and should be permitted to make long distance calls to family, guardians, lawyers and their case manager as part of their contracted services. The guardian may have to become involved in negotiating a reasonable schedule if long distance calls are excessive. Phone cards or a cell phone may help.

If the shared living provider has no landline and only has a cell phone, s/he should make the cell phone available according to the guidelines stated above for landlines.

An individual who resides in a staffed residence should have access to a telephone and permitted to make long distance calls to family, guardians, lawyers, and their case manager. The guardian may have to become involved in negotiating a reasonable schedule if long distance calls are excessive. Phone cards or a cell phone may help.

A person under guardianship may decline unwanted calls just like any other adult.

b. Calls That Are Abusive/Harassing

A guardian has the legal authority to restrict calls to a person under guardianship by a person who has abused, harassed, or exploited the individual in the past, but this authority should be used sparingly. Whenever possible, the guardian should talk to the person under guardianship and explain why s/he is going to restrict calls. If the person under guardianship disagrees with the restriction, the guardian should explain to the individual his or her right to appeal the decision (See Part Five, Section K: Grievance Process).

If a guardian finds it necessary to restrict calls, s/he should notify the caller and make a plan for an alternate method of communication (such as a birthday card, letters, or messages communicated by the guardian). Depending on the severity of the abuse and/or exploitation, it may be determined by the guardian that it is in the best interest of the individual to have no contact with the abuser.

c. Disturbing Phone Calls

Some callers may upset or disturb a person under guardianship. These calls should not be restricted by the guardian (or anyone else) except as a last resort. Usually the guardian will start by talking to the caller, who may not realize how disturbing the calls are, and may be willing to change. Often it will be helpful to involve the therapist in supporting the consumer and the caller to come up with a plan to improve or limit communications.

d. 900 Numbers

Calling 900 numbers is legal and need not be restricted if the person under guardianship is willing and able to pay the charges. This is rarely the case, however. A 900 number block on the phone is a practical solution. The phone company will often be willing to forgive charges incurred by a person under guardianship if the guardian can make a persuasive argument that the person lacked the cognitive ability to understand he would have to pay for the call.

e. Excessive Long Distance Charges

If education and counseling do not stop a person from incurring more long distances charges that s/he can pay for, a long distance block on the phone is usually necessary. However, as stated above, a person in a shared living home should not have to pay for reasonable calls to family, guardian, and lawyer. A phone card or a Trac phone is often a good solution.

f. Link Up and Lifeline Services

A person under guardianship who lives alone will ordinarily qualify for a minimum cost basic landline. The guardian should help the person apply to the phone company for Link Up and Lifeline service, which provides reduced installation and monthly charges.

g. Person Under Guardianship is Making Disturbing Calls

If a person under guardianship is making calls that are not illegal but are disturbing to another person, follow the same procedures described above. The guardian is not responsible to, and, ordinarily should not stop the calls. The person receiving the calls has many options: to hang up, to get caller ID, or change the number.

h. Person Under Guardianship is Making Illegal Calls

Examples of illegal calls are:

- Calls to a victim that are prohibited by conditions of release, probation order, APS, etc.
- Calls to an underage boy or girl to solicit or arrange sex
- Calls that could be considered stalking or harassment
- Calls that violate a Temporary Restraining Order (T.R.O.) or other court order

The guardian's job is, first, to be sure the person under guardianship knows the calls are illegal and knows the consequences for violation. The guardian should restrict the person's access to a phone only if:

1. It is believed that the person is highly likely to make illegal use of the phone, or
2. It is believed that the person does not comprehend that the calls are illegal.

i. Cell Phones

Cell phones are a symbol of status and autonomy to many, as well as offering convenience and a means of staying in touch with a person. The cost of cell phone plans make them prohibitive for most people under guardianship, but Trac phones and family plan phones may offer affordable options. Cell phones pose a risk of theft and loss, like other electronic devices. However, if a person is becoming independent a cell phone can be a key safety measure that permits a person to call for help or be located when s/he is late coming home. For a person learning independent living skills, carrying and using a cell phone may be a valuable safety tool.

2. Mail

In general, no one 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:

- a. If the guardian has financial authority, the guardian may direct that mail that appears to be financial in nature (e.g. bills, bank statements) be directed to a designated person handling the individual's finances. Similarly, ads and solicitations (such as credit card solicitations) may be directed to a designated person.
- b. Correspondence regarding a person's benefits and 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.
- c. 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.
- d. 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 s/he wants to ask to read it to him or her.

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.

3. Internet/Facebook

Many individuals under guardianship use computers to obtain information and to communicate with others. The guardian may need to play a role in helping the person use the computer safely to avoid problems or to deal with issues that arise. If a guardian communicates with an individual using a social media, all necessary precautions need to

be taken so that inappropriate or personal information is not inadvertently shared or accessed.

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 limit the person's access to the computer.

4. *Communication with Individuals who are Deaf or Hard of Hearing*

Individuals who are deaf and hard of hearing must have a means of communicating with their guardian as well as friends, family, and service providers. Fortunately, there are a variety of communication tools that are available to individuals through the Vermont Center for the Deaf and Hard of Hearing. These tools include:

- TTY or Braille TTY
- CapTel phone (An amplified telephone with written captions of the conversation.)
- Amplified phone (You can choose the type: corded, cordless, large buttons, caller ID, etc.)
- Voice carry-over "VCO" telephone (A telephone that allows deaf people to read incoming messages from a relay service, but lets them use their voice to respond.)
- Hearing carry-over "HCO" telephone for people who can hear but cannot speak: (you type on a TTY keyboard and relay operators translate it to voice for you, and you hear the caller through speakers),
- Electrolarynx telephone
- Computer with speech creation software
- Personal computer (including used equipment) combined with text telephone software, or just the text telephone software for a computer

In addition to one of the above, the center can provide one or more flashing lights and/or loud ringer devices (to know that the phone is ringing) or other adaptive equipment needed to use a phone. The contact person for VDHH's Equipment Distribution Program is Jorika Stockwell who can be reached at jstockwell@vcdhh.org or 802-258-9549.

Once the best way for the individual to communicate is determined, the Guardian must assure that s/he has the equipment to do so in his or her home. In addition, the Guardian must have access to the equipment required to communicate with the individual. For people who are deaf and require an interpreter to communicate in person with the Guardian or in meetings, an interpreter must be available. The Office of Public Guardian will pay for interpreter services when an approved interpreter is used. The list of approved interpreters is available at:

<http://vocrehab.vermont.gov/programs/rcd/interpreters/vtinterpreters>

F. Person's Residence and Moving a Person

Each individual's living situation must be evaluated for appropriateness, health and safety concerns, and whether it is the least restrictive alternative for the individual. Considerations that the Guardian must consider when evaluating the individual's ability to remain in the home:

- *Available assets and income*
- *The individual's basic needs*
- *The level of care and services needed*
- *Availability of needed services*
- *Transportation to medical care or therapy*
- *Socialization*
- *Maintenance of the residence*

Each individual should be supported to reside in his/her own home. However, not all communities have the services and supports available to assist the person to do so, and not all individuals can afford the services that are available. An individual wishing to remain in his/her own home, and with adequate resources to do so, should be moved only to prevent substantial harm.

(Items in italics are adapted from the National Guardianship Association; The Fundamentals of Guardianship: What Every Guardian Needs to Know; page 42.)

For individuals who receive developmental services, prior to placing an individual in a newly identified home, a health and safety inspection must be completed by housing experts from Disability and Aging Services. The appropriateness of the home from the aspect of being able to meet an individual's needs is determined by the guardian.

Moving arrangements and costs for an individual are generally managed by the Designated Agency. There are times when it is necessary to pay someone to move larger items, a request for funding can be submitted to the Director of the Office of Public Guardian.

G. 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 assure that the procedures identified in DAIL's *Behavior Support Guidelines For Support Workers Paid With Developmental Services* (2004) (Appendix N) <http://www.ddas.vermont.gov/ddas-policies/policies-dds/policies-dds-documents/behavior-support-guidelines>) are followed.

These guidelines are based on positive support strategies, and represent a commitment to work continuously to end coercion. 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 October 2004*, an individual and his or her guardian (if any) *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. Where 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 to which all team members can agree. 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 or 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 or guardian can then decide whether he/she will accept services, including the plan. Except for court-ordered services, a guardian or a person without a guardian can refuse services altogether.

H. Medicaid Qualifying Trusts, Benefits, and Resources

It is the role of the guardian to assure that the individual is receiving all the benefits to which s/he is entitled in a manner that does not jeopardize access to services. There are situations, particularly for elders, where assets impact the individual's ability to access services, particularly a nursing facility should that be required. Below are strategies that can be employed to protect an individual's assets while providing them with access to the services that they need. It should be noted that an attorney is required to set up a trust.

1. Medicaid Qualifying Trusts

Most individuals 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, would eliminate their eligibility for Medicaid benefits, which would then severely impact their ability to receive services. The intent of this trust is a direct effort to take advantage of the federal laws under USC Title 42 to avoid a spend-down of the person's estate when institutionalized into a long-term nursing facility. In other words, its purpose is to help the grantor qualify for Medicaid (when institutionalized) and thus reserve the estate for his/her heirs. Under normal circumstances, an institutionalized person's estate will be spent down until he/she becomes "indigent" for purposes of qualifying for Medicaid (or will qualify if already indigent upon entering the nursing home). At that point, Medicaid funds will be used to pay for the nursing home occupancy.

If a person (giftor) gives away his/her assets in contemplation of entering a long-term care facility, the giftor will not qualify for Medicaid if the gift(s) was made outright within 36 months of the application. So, the gift must have been made for Medicaid qualifying purposes beyond the 36-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 to pay for nursing home costs.

This type of planning allows parents to effectively give away assets in contemplation of a future, nursing home occupancy and yet receive lifetime income distribution benefits from the gifted assets. (There can be no distributions from principal allocated to the grantor for any reason, discretionary or otherwise.). That is obviously better than an outright gift by the grantor outside of a trust where no vested benefit from the gift can be retained by the grantor.

<http://www.livingtrustcenter.com/articles-and-contributions/qualifying-medicaid-asset-protection-trust.htm>

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.

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).** A Qualifying Income Trust (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).** A Special Needs Trust 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.** A 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.
http://dpaweb.hss.state.ak.us/training/enews/issue_19/medicaid.html

2. Benefits

- a. **Social Security Administration Supplemental Security Income:** SSI, or Supplemental Security Income, is a federal program that provides monthly cash

payments to people in need. SSI is for people who are 65 or older, as well as for blind or disabled people of any age, including children.

To qualify you 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. And the value of certain other resources, such as a burial plot, may not count either.

To receive SSI, you 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 you get in the beginning of each month includes both the federal SSI payment and your supplement from Vermont.

<http://www.ssa.gov/pubs/11128.html#a0=0>

- b. **Social Security Disability Income:** 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 Social Security Administration (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. The disability must have lasted, or be expected to last, a minimum of twelve months and you must be unable to earn an income greater than \$1000 per month. 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.

- c. **Medicaid:** 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. Eligibility is based on income and resources (e.g., cash, bank accounts, etc.).

In some cases, Vermonters enrolled in Medicare may also be eligible for Medicaid. 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. Applications for Medicaid are made through www.greenmountaincares.com.

d. **Medicare:** Medicare is a federally funded health insurance program for:

- people age 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).

Medicare has three 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.

Prescription Drug Coverage - Most people will pay a monthly premium for this coverage. Starting January 1, 2006, new Medicare prescription drug coverage will be available to everyone with Medicare. Everyone with Medicare can get this coverage that may help lower prescription drug costs and help 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. 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.

Some people meet the eligibility criteria for both Medicare and Medicaid. In such cases, Medicare is considered to be the primary insurance and Medicaid the supplemental.

e. **Representative Payee:** For some individuals, money management is challenging, yet for the most part the individual can manage effectively. In order to assist the individual to manage his 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 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 SSA requests a report, a payee must provide an accounting to

SSA of how benefits were used or saved.

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 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 payee a person or organization must apply for and be appointed by SSA.

I. Person's Medical Status

For a person newly coming into guardianship, information about the individual's current and past medical status must be obtained from physicians, psychiatrists, therapists, and other health care providers. Hospital discharge summaries and facility care-plans records should be reviewed. The newly appointed guardian should immediately obtain a current medication review (including regularly used over-the-counter medications and supplements) from a pharmacist or knowledgeable physician. It is not uncommon to discover that a person has been taking numerous medications for a long period of time without appropriately coordinated medical supervision, and, as a result, has become confused or disoriented, is experiencing memory loss, or is exhibiting aggressive or combative behavior. A pharmacological review can clarify whether the individual's medications continue to be appropriate. The Guardian should also inquire whether there are newer medications with fewer side effects that may be more effective for the person.

(Items in italics are adapted from the National Guardianship Association; The Fundamentals of Guardianship: What Every Guardian Needs to Know; page 40.)

Definitions

"Critical health care decision" means a decision to authorize or withhold medical treatment, which raises significant ethical considerations.

"Terminal condition" means an incurable condition which, regardless of the application of life-saving procedures, will, within reasonable medical judgment, produce death, and where application of life sustaining procedures would only postpone the moment of death.

"Irreversible condition" means a condition, which is incurable. A decision to withhold medical treatment for an irreversible condition may be made when the burden of treatment outweighs the benefits of treatment to the person.

1. Making Medical Decisions (Family (18 VSA) and Probate Courts (14 VSA))

The role of the Office of Public Guardian is to protect and promote the health of all people we serve and to provide and seek treatment which will best promote the individual's overall well-being and functioning.

Medical decisions include decisions to give consent or to withhold consent for initiation or continuation of medical and dental treatment. A guardian who has been appointed by a Vermont Probate Court must clear any major decision regarding treatment with the Probate Court.

Court approval is not required for medical treatment decisions by Guardians appointed by a Vermont Family Court; instead, Title 18, Section 9310 (a)(4) requires that "any decision to withhold or abate medical treatment for an irreversible or terminal condition shall be reviewed by the department's ethics committee.

2. Role of the Guardian in Making Medical Decisions

The role of Office of Public Guardian staff is to seek health care and make treatment decisions which will:

- a. Preserve life and maintain function.
- b. Consider the desires of the individual, his/her family, and his/her significant others.
- c. Be respectful of the dignity and integrity of the individual.
- d. Promote the individual's comfort and peace of mind.

A guardian with medical decision-making authority bears primary responsibility for decisions regarding initiation, continuation, or abatement of life-sustaining treatment.

In making medical decisions, a guardian shall be guided by what she can learn about the wishes and preferences of the individual. Learning enough information to determine what the individual would want can require much diligence.

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.

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 she feels she fully understands 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. And, if not, request time to

consult with the individual, the team, and the family about major medical decisions, and to get a second opinion.

The guardian should look for opportunities for an individual to make his or her 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 cleaning or eye exams. The guardian should not create a situation where the medical provider may think that the case manager or shared living provider is the guardian. In other words, if the guardian's intent is for the individual to do his own decision-making, the opportunity is lost if the case manager or shared living provider acts as a go-between with the medical provider.

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

Guardians do not usually sign general consents to medical treatment because when a guardian signs a general consent to medical treatment, important medical decisions may be made without the guardian being notified. Emergency consents are unneeded because OPG has a 24-hour on-call line, and someone is always on call. Even though the guardian does not sign a general consent for medical treatment, the provider may still call an ambulance or transport the individual for emergency care, and the hospital or doctor may give necessary emergency care while attempts are being made to contact the guardian.

3. *Excluded Procedures (Lobotomy, Electroconvulsive Therapy, Sterilization)*

Guardians do not have the authority to consent to lobotomy or electroconvulsive therapy (ECT). If all other treatment has failed and the guardian believes the individual needs ECT, the guardian should consult with the Program Director.

Vermont law 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 Program Director should be consulted in any case where sterilization is being considered. If the individual wants sterilization, the usual procedure will be to refer him or her to Vermont Legal Aid and to work cooperatively with Legal Aid to obtain the necessary evaluations and court approval.

4. *Planning Ahead for Critical Health Care Decisions*

The need for end of life decision making will be a reality for most people regardless of their current state of health or disability. These decisions, while never easy, can be easier

if pro-active advance care planning has occurred well before the time comes for the making of the specific critical health care decision. Depending on the stage of life of the individual and his or her health status, this planning can take different forms. For someone who is relatively young and healthy, this can look like documenting a casual conversation around the meaning of an individual's comment of "I would never want that" when they see a story about a critically ill person in the media. For someone whose path to the end of their life either is clearer, due to chronic health problems or advanced age, these conversations may be more directive about the person's interest in specific treatment options in specific circumstances. In any event, certain principles guide all of this planning.

- a. The individual needs to be involved in these ongoing conversations to the extent that he or she can. This planning should be part of the ISA process. The form provided by the Vermont Ethics Network is a non-threatening way to assist in guiding such a discussion.
- b. 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 can be a good idea for the family and team to explicitly address end of life planning before the need for critical decision-making occurs. Taking Steps: Planning for Critical Health Care Decisions published by the Vermont Ethics Network is a step by step guide to helping families and teams to prepare for critical health care decisions.
- c. Planning for critical decisions is a dynamic process that changes as the individual's situation changes. Options that seem reasonable for someone in good health may seem less reasonable when the person's health declines.
- d. These plans should be documented to serve as a guide to future decision making.

5. Making Critical Health Care Decisions

In making critical care decisions for a patient with a persistent terminal condition or an irreversible condition, a guardian, together with the team which is supporting the individual, shall follow these steps:

- a. Before accepting a medical opinion that a patient's condition is terminal or irreversible, obtain a least one independent second medical opinion that supports the conclusion regarding the patient's condition. (There may be an exception in extraordinary situations where the diagnosis, prognosis, and treatment options are unquestionable, and further evaluation would be intrusive to the patient.)

If the second physician is of the opinion that the individual may recover with treatment, the guardian shall proceed on the basis of the opinion unless the guardian does not feel the second opinion is reliable, in which case yet another opinion should be sought.

- b. Discuss the options with the individual, his or her family, his or her religious representative, friends, and support workers who know the individual well. The

primary focus of these discussions is to assist the guardian to determine what the preferences of the individual would be if he or she were in a position to decide.

- c. Determine the goals of health care for this individual. In those situations where the patient's condition is terminal or irreversible, the primary goal of care may be to promote the comfort, dignity, and peace of mind of the individual.

No decision to withhold or abate medical treatment will be made based solely on the age or the level of disability of the person.

6. Ethics Committee

a. Role of the Ethics Committee

The function of the Ethics Committee is to review and give advice regarding critical health care decisions.

b. Review Decisions to Withhold or Abate Life-sustaining Treatment

The Ethics Committee must review any decisions by a Guardian to withhold or abate life-sustaining treatment for a person with a developmental disability. Where prior review is not possible, review should be sought at the next meeting of the Ethics Committee. The director of the Office of Public Guardianship is responsible for deciding whether to request an emergency meeting of the Ethics Committee.

The Ethics Committee may review a decision by a Public Guardian appointed by the Probate Court to withhold or abate life-sustaining treatment if it presents complex or difficult issues and Ethics Committee review would be helpful to the person, the court, or the team.

c. Assist with Ethical Aspects of a Critical Care Decision

The Committee is available to assist any interested person who is concerned with the ethical aspects of a critical care decision for a person who receives services through the Division. An "interested person" must know the individual personally.

d. Advise Division in Policy Making

The Ethics Committee may advise Division in the development of policy concerning health care decisions about people with developmental disabilities and people who are aging.

e. Advisory Capacity

The role of the Ethics Committee is advisory. Final responsibility for any critical health care decision lies with the Office of Public Guardian.

If the Ethics Committee disagrees with a decision by a Guardian, the Chair of the Ethics Committee shall notify the Commissioner of the Department of Disabilities, Aging, and Independent Living of the disagreement.

f. Composition of the Ethics Committee

The 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/or people who are aging. The Chair of the Committee is a staff member of the Department of Disabilities, Aging, and Independent Living (DAIL). The other members are not employees of DAIL although DAIL employees may attend the meetings. The Deputy Commissioner of the Division of Disability and Aging Services appoints members of the Committee.

g. Frequency of Meetings

The Ethics Committee meets bimonthly or when needed. Emergency meetings may be by conference call.

h. Confidentiality

Proceedings of the Ethics Committee are confidential. Any participants in the 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 Ethics Committee cases will be treated as confidential material (e.g., de-identified prior to distribution, extra copies shredded after use).

i. Exception to Ethics Committee: Emergency Decisions

There are times when decisions to limit or withhold medical treatment may be made on an emergency basis prior to presentation to the Ethics Committee.

1. Conditions where the decision is clear and post-decision review by the committee is deemed sufficient based upon:
 - a. Clear and consistent medical opinion from two independent medical sources,
 - b. Approval of the Director of the Office of Public Guardianship,
 - c. Strong agreement of the person's team, and
 - d. Agreement by all known family members involved in the person's life.
2. Conditions where it is not possible to convene a timely emergency Ethics Committee meeting and where there is:
 - a. Determination of the Director of the Office of Public Guardianship and the Chair of the Ethics Committee that waiting to convene an Ethics Committee meeting is a greater burden upon the person than requiring treatment,
 - b. Strong agreement of the person's team, and
 - c. Agreement by all known family members involved in the person's life.

J. Arrest and Incarceration of Person

It is important that the guardian protect the individual 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:

- Talk with the individual to let him/her know the seriousness of the issue.
- Tell the individual to not talk about the case with anyone unless you, the guardian, are present.
- CAREFULLY consider giving ANY information to the police.
- Make a call to the public defender's office. Try to arrange a meeting prior to the court arraignment, if possible.
- Don't allow any questioning by the police without having the individual's attorney present.
- Briefly describe the process of legal proceedings to the alleged perpetrator.
- Go to court to formally make an application for a public defender and then meet with the assigned attorney.
- Be sure that the lawyer is aware of the person's need for a guardian and that the lawyer has the Americans with Disabilities Act (ADA) in mind. Meet with the lawyer and, if necessary, explain/interpret.
- Go before the judge, for the initial arraignment, where a plea will be entered. At this point, the attorney might advocate for a competence evaluation. Usually, no action of substance will occur during this hearing.

Usually, people go home with Conditions of Release, for example: No contact with the victim; no alcohol use. Talk with the person and other team members about the conditions, and clarify, if necessary.

At a later court date, a determination of guilt, or not, competent, or not, will be determined. Outcomes could include fines, community service, probation, or for first time offenders, Court Diversion is possible. If the individual receives Court Diversion, the guardian should attend and work with the Diversion Board.

K. Interface of Act 248 and Public Guardianship

Act 248 is Vermont's civil commitment law for people with mental retardation who have been found to be a danger to the community and who cannot be sent to prison. Act 248 is located in the Vermont statutes at Title 13, Section 4823 and Title 18, Sections 8839 – 8846. Act 248 was adopted in 1987 to address a hole in the law. At that time, Vermont law authorized civil commitment of an individual with mental retardation only if the person was a danger to himself. Thus, when criminal charges were dismissed against an individual found incompetent to stand trial on the basis of mental retardation, the court had no option but to let him go free. If a person did not agree to treatment, he could not be held, and the public could not be protected from repeat offenses. Act 248 provided 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.

Procedures

Typically, cases proceed as follows:

1. An individual is found incompetent to stand trial and the psychiatrist/psychologist who wrote the evaluation for competency confirms the person has mental retardation.

2. The state's attorney files a petition in District Court asking the judge to put the person under Act 248.
3. The court orders the Commissioner of the Department of Disabilities, Aging and Independent Living (DAIL) to complete an evaluation of the person.
4. If a sexual offense is involved, DAIL requests an evaluation of the person that includes:
 - a psychological assessment to determine whether the person has mental retardation.
 - a psychosexual evaluation to determine whether the person presents a danger of harm to others and to assess the nature of the risk.
 - recommendations for custody, care, and habilitation of the person.Usually, DAIL asks the designated developmental services agency for the county where the person lives to conduct the evaluation, but the Department may select a different evaluator if there is a conflict of interest, a history of having served the individual, or if specialized knowledge is needed for the evaluation.
5. DAIL submits the evaluation to the court. If the accused and his lawyer disagree with the evaluation, they can ask the court for time to obtain a second evaluation from a different evaluator. The accused may also argue that he should not be put under Act 248 because he has not committed the act of which he is accused. In these situations, there is a hearing where the State's Attorney presents witnesses to support the state's case, and the lawyer for the accused may cross-examine the witnesses or put on witnesses who support the accused's version of events.
6. The court reviews the evaluation(s) and evidence, if any, decides whether or not to put the person under Act 248, and determines the specific conditions to include in the court order. Often, at this stage, the state's attorney, the attorney for DAIL, and the public defender agree upon and submit a proposed order to the judge for signature.

ACT 248 and Guardianship

The court order places the offender in the custody of the Commissioner of DAIL. At this point, the Division of Developmental Services (DDS) is responsible for designating an agency to provide care, custody and habilitation to the person. DDS generally selects the designated agency (DA) for the county where the person lives, but may select a different agency if it is better suited to provide the necessary services. DDS might also select another agency in order to provide a safe distance from the victim or because of intense community hostility. DAIL's Public Safety Specialist provides monitoring and oversight to ensure that the court order is carried out.

Most court orders include:

- an order to the offender to participate in treatment and offender therapy.
- an order to the offender to live where his 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 to the offender not to drive a car, consume alcohol, or possess any
- weapon.

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

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

In some areas of supervision of the offender, the court order may give discretion to the Commissioner. For example, the order may allow the Commissioner to make any disclosures deemed necessary for community safety. However, in this example, although the final decision lies with the Commissioner, in practice the Commissioner's representative will arrive at a decision through consultation with the Collaborative Team.

An order under Act 248 is **not the same as a guardianship order**. An Act 248 order gives DAIL the authority to make decisions that affect public safety and the person's treatment for the offense, but the Department does not have authority to make decisions in areas unrelated to treatment and safety – such as medical care or financial matters. If the person under Act 248 has a guardian, the Department's authority supersedes the guardian's authority in areas relating to public safety and treatment, but the guardian retains authority in other areas, such as assuring that the individual receives proper health care. If the offender does not have a guardian, he continues to make his own decisions about medical treatment and financial matters.

L. Death and Final Arrangements

1. Death

In the event of the death of an individual receiving guardianship services, the guardian must call the critical incident line at 802-241-2678, the Director of the Office of Public Guardian, the Division Director, and the Administrative Support person. With the Director of OPG, determine if an autopsy is necessary.

It is important to notify the family, agency services coordinator, and supervisor. Guardianship ends at the moment of death for people who receive guardianship service. Decisions regarding the funeral, etc. automatically revert to the next of kin. Funeral directors do ask and clarify this point. In cases where the family is not involved with the individual, the guardian can request that the family provide written permission to manage the funeral and affairs of the individual.

2. Final Arrangements

Determine if pre-arranged funeral plans have been made and follow through with them; if not, assist with the disposition of the deceased by contacting a funeral director. The services coordinator may also help with this step.

If the individual did not make final arrangements prior to guardianship, the Guardian should attempt to determine the individual's preferences in regard to final disposition, funeral services, and burial. This may be accomplished by consulting with the individual, the individual's family and friends, or clergy. The individual's financial status will have an impact on this decision. There are minimal cremation benefits through General Assistance applied for at the Vermont Department for Children and Families, Economic Services Division. 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-paid burial plan.

(Items in italics are adapted from the National Guardianship Association; *The Fundamentals of Guardianship: What Every Guardian Needs to Know*; page 48.)

3. *Management of the Estate*

In time, and when there are no family members involved, the guardian may need to assist with the dispersing of the deceased's assets, which may include probate.

For individuals whose guardianship is ordered through the Probate Court, the following applies:

The following guardianship powers shall remain for up to two years after the death of a person under guardianship or until the appointment of an executor or administrator of the person's estate

- a. the power to arrange and pay for a funeral;
- b. the power to request medical, financial, or other records of the person in guardianship;
- c. the power to request an autopsy and to obtain the results thereof;
- d. the power to make and file a financial accounting; and
- e. any other powers which are incidental to the closing of and accounting for the guardianship and which are fully reported to the probate division of the superior court.

M. Miscellaneous Procedures

1. *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 assure that the couple obtains pre-marital counseling *and also* that the couple understand how marriage will affect their benefits. (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 couple are lower than the benefits the two are receiving when they are unmarried.)

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 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. 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:

- a. the individual does not understand the loss of financial benefits that will occur and is dependent on the benefits; or

- b. marriage is very likely to result in abuse or exploitation.

2. 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 Office of Public Guardian and obtain legal advice from the Vermont Disability Law Project about whether to end the union by annulment or divorce. Marital/couples counseling can also be considered.

3. Pregnancy

a. Mother - (Adoption, Non-consensual sex)

A guardian should assure that a woman who is pregnant gets health education, medical care, nutrition education, and healthy food.

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 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. 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. However, the guardian should make a note of the decision of the woman and the actions of the guardian in the case record. If there are any medical and emotional side effects, these may need to be shared with the woman's support staff.

If the woman decides to continue her pregnancy, the guardian should assure that she gets health education, medical care, nutrition education, healthy food, and 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 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 parents 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) because of abuse or neglect will get pregnant. The guardian may notify DCF that the woman is pregnant again. 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.

Even if 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. 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 reviewed by the Department's Ethics Committee on an emergency basis. (See Ethics Committee – Section Seven)

b. Father – Paternity

If a man under guardianship believes he is the father of an unborn child, the 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. And, if s/he 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.

4. What is Legal Parentage?

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 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 guardian might not want to establish parentage if the alleged parent has a history of abuse, violence, or criminal behavior, 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, for emotional and financial reasons, it is important to establish parentage as soon as possible after birth. 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 him to understand his child support responsibilities, financial, to decide what role he wishes to play in the birth of the child and in raising the child, to communicate these wishes to the mother, and to receive childbirth education and extensive education in infant care.

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.

5. 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, and the like. By law, the Office of Public Guardian may not serve as guardian for a minor child.

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 s/he needs 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 parents 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.

A guardian may find herself 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 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 his/her 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.

6. Sexuality

Sexuality is a basic human drive, and we support the right of all people to find satisfying ways of expressing their sexuality. Most people with developmental disabilities need education about safe sexual expression, and the opportunities to talk about and discover their sexual feelings; many need help and support to develop healthy social relationships. In general, adults 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 notified 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, 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.

There are some limited situations where it is the responsibility of the guardian to take action to prevent, postpone, or stop a sexual relationship. They are:

- 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 are strong health or emotional reasons why pregnancy would be dangerous to or for the woman.

7. Religion/Spirituality

A guardian should support a person under guardianship to practice and express his/her 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 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 indeed. 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.

A person under guardianship may be approached by proselytizers or evangelists. Individuals may wish to try out religious congregations or practices not their own and should ordinarily be supported to do so. However, on rare occasions, a religious sect may want to take the person out of state, to an extended retreat, or may engage the individual in practices detrimental to the person's health (such as giving up all medicines). In cases where the guardian believes that the religious group or practice puts the individual's health or safety at risk, s/he should consult with the Director of the Office of Public Guardian regarding possible actions to protect the person's health and safety.

8. Voting

In Vermont, individuals in guardianship have the same right to vote as all other adult Vermonters. The guardian should make sure that the individual knows s/he has a right to vote, knows how to register, knows how to vote, and gets help to register and vote.

No one should be required to register or vote. An individual should be advised that non-partisan education about the ballot choices is available.

9. Smoking

a. Consumers Who Smoke

Although a legal activity, smoking is addictive and highly hazardous to one's health. Guardians should approach smoking as they would other personal habits, which are very dangerous to a person's health (such as drinking and overeating).

Efforts to educate consumers about the dangers of smoking should be ongoing. Consumers should receive support in a variety of ways and at a variety of times to stop smoking. People who work with them must appreciate the difficulty of overcoming an addiction. Options such as support groups, nicotine patches, etc. should be offered and attempted periodically.

If a consumer does not understand the health hazards of smoking because of cognitive impairments, the person's team should take the same steps they would take if the person were exposing himself or herself to any other high risk activity without appreciating the risk (for instance, putting a person who likes to eat on a restricted diet). After consultation with a Human Rights Committee or Ethics Committee, a team may conclude that smoking is sufficiently hazardous for the person that there will be a plan to restrict the person from smoking.

Because second-hand smoke poses a danger to anyone living in a home with a smoker, particularly children, no Guardian should insist that a consumer be permitted to smoke indoors. A requirement for a consumer to smoke outdoors is a reasonable expectation of a home provider. If smoking indoors is of paramount importance to the consumer, the guardian or agency should locate another residence, rather than insisting that a non-smoking household permit a consumer to smoke indoors on a regular basis.

b. Homes Where Someone Smokes

Applicants to be home providers and current home providers who smoke (or have a smoker in their household) should receive education about the dangers of second hand smoke to the consumer and to other family members. Education should include methods of minimizing the effects of second-hand smoke by:

- Smoking outside
- Keeping windows open
- Smoking in a room with open windows
- The use of filters or specialized exhaust fans

A consumer who states that s/he is bothered by smoke or is observed to be bothered by smoke, should not be placed and or remain in a setting where people smoke inside.

In general, a consumer should not be placed in a setting that poses a danger of long-term exposure to second-hand smoke. Individual circumstances to be considered in deciding that a person may be placed or may remain in a home with second-hand smoke are –

- The person's health status – For example, a person with asthma, respiratory, or heart problems should not be placed in a home where anyone smokes on a regular basis. If an individual develops asthma or respiratory or heart problems while living in a home where someone smokes, the person should be removed if anyone is going to continue smoking inside.
- The person's ability to state whether or not s/he is bothered by smoke
- The number of smokers and amount of smoke in the home
- The importance of the relationship of the home providers to the consumer

10. 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.

PART EIGHT: Guardian of the Estate

The guardian of the estate is entrusted by the court with the responsibility to protect and preserve the individual's assets and manage the individual's affairs with prudence, intelligence, and discretion.

A. Communicating with the Person

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.

B. Marshaling the Estate

Carefully review the court order to determine the powers that have been granted to the guardian of the estate so appropriate action may be taken. Locate and take control of the person's assets as quickly as possible after appointment. A review of the mail will help identify bank accounts, investments, and other assets. The post office should be notified to forward the person's mail to the guardian or person responsible for managing the person's finances.

Make an initial search of the residence, with a witness. Take possession of all property to protect it from damage, loss, or destruction. Make an inventory of all assets for the court, including a safety deposit box.

(Items in italics are adapted from the National Guardianship Association; The Fundamentals of Guardianship: What Every Guardian Needs to Know; pages 51-53.)

PART NINE: Guardianship Modification or Termination

There are several scenarios under which someone is seeking to modify or terminate a guardianship. An individual who has been under guardianship displays the ability to make decisions for him or herself. In this case, the court is petitioned by DAIL to terminate the guardianship. In another situation, the individual who has a guardian may believe that he or she no longer needs a guardian despite the guardian and service providers believing that is not the case. The individual should be given access to the Disability Law Project who will assist him or her to petition the court to modify or terminate the guardianship. When this happens, most often the judge requests an evaluation to determine whether the individual remains in need of a guardian. Alternatively, a family member or interested party may request that s/he become the guardian, which again triggers a petition to the court, an evaluation, and hearing.

A. Title 14

14 V.S.A. § 3077. Termination and Modification of Guardianship

According to the statute:

(a) A person under guardianship or any person interested in the welfare of the person under guardianship may file a motion for termination or modification of the guardianship. Grounds for the termination or modification of the guardianship shall include:

- (1) the death of the guardian;*
- (2) the failure of the guardian to file an annual report, or the failure to file such report in a timely manner;*
- (3) the failure of the guardian to act in accord with an order of the court;*
- (4) a change in the ability of the person under guardianship to manage his or her personal care or financial affairs;*
- (5) a change in the capacity or suitability of the guardian for carrying out his or her powers and duties, including but not limited to any current or past expressed preferences of the person under guardianship to have an alternative person appointed as guardian.*

(b) After notice and hearing, the court may terminate or modify the guardianship, appoint a successor guardian, or restrict the powers of a guardian, consistent with the court's findings and conclusions of law.

(c) Notice and hearing on the motion shall proceed in the manner set forth in sections 3064 and 3068 of this title.

(d) Marriage of the person under guardianship shall not extinguish a guardian's authority.

(e) The following guardianship powers shall remain for up to two years after the death of a person under guardianship or until the appointment of an executor or administrator of the person's estate:

- (1) the power to arrange and pay for a funeral;*
- (2) the power to request medical, financial, or other records of the person in guardianship;*

- (3) the power to request an autopsy and to obtain the results thereof;*
- (4) the power to make and file a financial accounting; and*
- (5) any other powers which are incidental to the closing of and accounting for the guardianship and which are fully reported to the probate division of the superior court.*

B. Title 18

18 V.S.A. § 9316. Modification or Termination of Guardianship Services

According to the statute:

- (a) The commissioner shall provide guardianship services in accordance with the order of the probate division or family division of the superior court until termination or modification thereof by the court.*
- (b) The commissioner, the person with developmental disabilities, or any interested person may petition the appointing court, if it exists, or the superior court for the unit where the person resides to modify or terminate the judgment pursuant to which the commissioner is providing guardianship. The petitioner, or the commissioner as petitioner, and the respondent shall be the parties to a petition to modify or terminate guardianship.*
- (c) Notice and hearing on the petition shall proceed in the manner set forth in sections 9307-9309 of this title.*

PART TEN: Documentation and Record Keeping Requirements

A. Case File Records

Case files document the guardian's work, and supplement the guardian's memory with a written record. A well-organized file 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 record provides a case history and background to assist whomever covers for the absent staff. And, when the guardianship is transferred to another person, the case file record serves as a critical source for historical background.

1. The Guardian's File: General Case File Set Up

The guardian is responsible for maintaining the file as a functional working document. This means periodically weeding out obsolete, superseded or duplicate documents (see Part 10, Section B Case Record Retention and Disposal), and assuring that essential documents are included in the file. Materials of historic importance not needed for the working file may be kept in a back-up binder.

A guardian's case file should be organized as follows. (Items expected to be included in ALL files are marked with an asterisk *).

2. DS Files

Section One: Information for Quick Reference

- * Emergency Fact Sheet that includes contact information for the individual, home provider and case manager
- * A recent photo of the individual
- * Advance Directives
- * Ethics Committee Decision(s)
- * Current guardianship order
- * Court ordered, comprehensive Evaluation
- * Other (current) court orders, such as TRO'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 in the emergency fact sheet

Section Two: Annual Reviews, Assessments and Court Reporting

- * Assessment conducted 90 days after entering guardianship (18 V.S.A)
- * Annual Reviews and guardianship assessments;
- * And/or annual report to the Probate Court, Probate Court accounting

Section Three: Medical

Medical information- Medicaid and Medicare cards, other health insurance cards
Psychiatric medications
Results of important medical tests
Correspondence with medical professionals
Medical assessments
Hospital records and discharge summaries
Medical history
PT/OT, speech therapy, etc. evaluations

Section Four: Service Plans (subdivide as necessary - employment, community safety, etc.)

Current ISA, IEP, ILA, nursing home/RCH plan of care, or other service plan
Service funding, such waiver
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 (subdivide as necessary)

May include:
Tax documents
Benefit information such as Social Security or Medicaid application, and notice of benefits
Prepaid burial contract
Life insurance policy
Other contracts, documentation of loans, cell phone contract,
Name and address of representative payee, and correspondence with
Current lease
Copies of trusts, correspondence
Bank statements, any bank statements in name of the person

Section Six: Case File Notes, Critical Incident Reports

*Case notes, monthly, or more frequently
Critical Incident reports
Electronic case notes should be printed out at least quarterly, signed and put in the individual's file

Section Seven: Correspondence and E-mail

Use this section for any correspondence that does not fit into a category above

Section Eight: Personal Section

Photos, artwork, poems, awards
Department of Children/Family relevant records
Family and social history
Person's 'story'

3. Elder Files

Section One: Information for Quick Reference

- * Emergency Fact Sheet that includes contact information for the individual, residence (if applicable)
- * A recent photo of the individual
- * Advance Directives
- * Current guardianship order
- * Court ordered, comprehensive Evaluation
- * Birth certificate; marriage certificate; divorce documents
- * Funeral and burial arrangements, if any
- * Contact information for relatives, etc. if not included in the emergency fact sheet

Section Two: Court Reporting

- * Annual report to the Probate Court, Probate Court accounting

Section Three: Medical

Medical information- Medicaid and Medicare cards, other health insurance cards
Psychiatric medications
Results of important medical tests
Correspondence with medical professionals
Medical assessments
Hospital records and discharge summaries
Medical history
PT/OT, speech therapy, etc. evaluations

4. Central Office Files

The central office file for each person under guardianship will contain the following:

- Petition
- Comprehensive evaluation
- Original guardianship order and any subsequent order, such as modification to the original order
- Guardianship assessment (for people with developmental disabilities)
- Annual reviews
- Correspondence or notes by or to the Director of the Office of Public Guardian
- Ethics committee materials and decisions
- Other documents that provide background or documentation of actions by the Director of the Office of Public Guardian

5. Confidentiality of Case Records – See Part Five

B. Case Record Retention and Disposal

The following schedule for retention and disposal of guardianship records has been developed jointly with the State Archives. Guardians may retain records for longer than the specified period when, in the judgment of the guardian the records may be useful. Records may not be disposed of sooner than the time periods in the schedule. Questions about interpretation of the record retention policy should be directed to the Director of the Office of Public Guardian. Records designated for disposal must be deposited in a confidential shredding receptacle.

If an item within the case file record is designated for disposal (no longer required for the case file) and is of a personal nature, the guardian may give the item (such as photos, old school records, artwork etc.) to the individual, their family members, or others who may have a use for them. The guardian must inform the recipient that any items of a confidential nature must be maintained as such.

1. Documents That Must Be Retained

- Guardianship and any other court documents (trusts)
- Annual reviews/court reports
- Old social histories (psychological evaluations, Brandon Training School info, etc...)
- Current ISA and supporting documents (psych support, medical support, and list of current meds, needs assessment)
- Current Medicaid waiver information
- Contact notes
- Any other documentation of case management activity for 7 years
- Any kind of prior arrangements (ie: pre-paid burials, family wishes, etc...)
- Current Face sheet/Emergency contact sheet
- Copy of last reviews completed (Social Security, Disability Update, DCF, etc...)
- Important medical information
- Correspondence, including emails
- Tax returns for 7 years (Where guardians have responsibility for Financial guardianship)
- Copy of Medicare D/Medicaid cards
- Copy of respite checklist
- Communication info
- Copy of any contracts/leases
- Current photo of person
- School records for someone currently in school or recently graduated
- Current employment information
- Request for Funds until sure it's been paid (where OPG is payee)
- Family history documents (ie: photos, newspaper clippings, religious info)
- Birth certificate

2. Documents That Can Be Disposed

- Old notices of benefits from Medicaid, SSA (older than two calendar years)
- Old ISA's
- Old Needs assessments
- Old notices of court hearings

PART ELEVEN: Orientation, Training and Supervision of Guardians

A. Orientation

New employees receive orientation as a State employee as well as job specific training from the Office of Public Guardian. Upon hire, the State of Vermont provides a half-day training, via the web, on the basics of state employment covering subjects such as the Vermont Civil Service System, benefits to state employees, health, the work environment, and promotional opportunities.

A new guardian begins his or her employment by meeting with and then shadowing the supervisor and other guardians. This provides an opportunity to observe guardians with different personalities/styles.

Orientation Topics

1. Mandated Reporting – Also Included in Part Five

All suspected situations of abuse, neglect, or exploitation of a child or disabled or elderly adult must be reported to Adult Protective Services, even if the information was given to you by your client with an expectation of confidentiality. In such situations, the Guardian should explain to the client that s/he respects their privacy and in most situations everything the client shares in confidence will be private; however, the law requires that information about abuse, neglect, or exploitation be reported.

2. Investigations and Other Legal Matters

If the person for whom you are guardian is being investigated for abuse in a criminal matter, you owe the individual the same (or greater) protection of privacy and confidentiality than an informed citizen would choose for himself.

- Advise (or insist) that the individual not be interviewed by the Department for Children and Families, Adult Protected Services, or police except with a lawyer present;
- Do not release any records except to the person's own attorney without permission from the Director of the Office of Public Guardian or legal department;
- Do not tell what you know about the incident (even if you think it is exculpatory) except if you were a direct witness. For instance, you may tell police or an investigator that you actually saw the individual assault someone.

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. Do share information you believe is necessary to protect the person from further victimization. If possible, obtain a victim advocate or Legal Aid attorney to help the victim decide what information he or she wants to share. Discuss any release or withholding of information with your supervisor.

3. Email (See Part Eleven – AHS policies email)

4. Case Records (See Part Ten)

5. Targeted Case Management

Targeted Case Management (TCM) can be billed for services provided by OPG guardians to individuals with developmental disabilities. TCM must be reported on a monthly basis. Services are defined as follows:

Case management services are services provided to assist individuals, eligible under the State Plan, in gaining access to needed medical, social, educational and other services. (Vermont State Plan, submitted to Centers for Medicaid/Medicare July 2010).

Documentation of all services provided is reported on the Monthly Case Management log, reported in the following categories:

- a. “In Person Contact” - In-person or written communication of 15 minutes or more with the individual or individual providing services/supports to the individual related to the guardian’s areas of responsibility (e.g. Social Security, medical provider, caregiver, case manager, via team meetings, attorney, landlord, etc.).
- b. “Home visit” - must occur at the person’s home unless the case record documents a reason why the visit should not occur in the home.
- c. “Other Contact” - Contact when the client is not present, with a service coordinator or case manager, attorney, health care provider, family member, others engaged in supporting or concerned for the individual’s well-being. Other contacts may occur by telephone call or in person when the client is not present.

Documentation required for delivery/billing of TCM for people under guardianship or receiving just case management:

- a. The case file contains the guardianship order or signed case management agreement for people not under guardianship.
- b. Documentation of the Contacts, including the monthly case management log information:
 - Date of contact
 - Type of visit (HV=Home Visit, OC= Other Contact. IC = Individual Contact of 15 minutes or more)
 - Typed note that includes all correspondence with date of billed service.

The Monthly Case Management Log must be reviewed and initialed by the guardian’s supervisor quarterly. Guardianship TCM is billed at a monthly rate. There must be at least one home visit individual contact, home visit, or other contact in a month for billing.

Billing exemptions/caveats:

- a. The individual is incarcerated in jail or prison. Targeted case management cannot be billed for any hours.
- b. The individual is in a nursing home. Targeted case management can only be billed for work done in the 30 days prior to discharge.

The Office of Public Guardian is responsible for assuring that documentation is maintained and available for audit for at least seven years.

6. Role of OPG Program Clerk

The Program Clerk for the Office of Public Guardian is co-located with the Director of the Office of Public Guardian and provides assistance with a wide array of needs including arranging for guardianship evaluations, maintaining the SAMS database, and paper records, and taking and directing calls to appropriate parties.

7. OPG Website

The Office of Public Guardian has a website available as a reference for guardians and the community. As part of orientation, new guardians are oriented to the website <http://www.ddas.vermont.gov/ddas-units/units-opg/opg-default> and shown the information/resources available to them.

B. Office of Public Guardian Training

The Agency of Human Services, Department of Disabilities, Aging and Independent Living, and/or the Division of Developmental Services occasionally mandate training. Training topics have included:

- Domestic Violence
- Health Insurance Portability Act (HIPAA)
- Americans with Disabilities Act (ADA)
- Deaf and Hard of Hearing
- Adult Protective Services (APS)/Mandated Reporting
- Others as identified and directed

The Office of Public Guardian offers regional OPG staff meetings at least quarterly and full staff meetings two times per year. Frequently special guest speakers will address the staff on subjects of topical interest. Regional meetings offer a forum for discussion of individual cases, brainstorming, and strategizing to address regional concerns, issues, and topics of interest.

The Director of the Office of Public Guardian and the OPG Supervisory Team are responsible for identifying training needs and opportunities as well as addressing staff requests for specific training. Guardians are encouraged to identify job related training requests. Most Guardian training requests are approved if they are job related. 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. Generally, out of state training requests cannot be honored, but staff are encouraged to pursue in-state training opportunities that are job related.

Examples of topics that may be covered:

- End of Life and Ethical Decision Making
- Community Mental Health Services
- Hospital-based Infections
- Case Management Documentation
- Adult Protective Services, Abuse Neglect Exploitation
- Choices for Care
- Money Follows the Person
- Psychiatric Meds
- Relevant movies, such as *Wretches and Jabberers* and *Win Win*
- Guardianship Statutes review, guardianship modification review
- Ethics
- Medical procedures and decision-making in advance planning/directives
- Social Media safety
- Benefits 101
- New payroll/expense system
- Crisis De-escalation
- Employment and Higher Education opportunities
- Current Division of Developmental Services expectations around ISA's, CIR's, etc.
- Housing programs (Section 8, etc.)
- Tablets, SAMS, iPhone, and other technology
- Planned Parenthood sexuality training
- Dialectical Behavior Therapy (DBT)
- Legal issues
- Information Technology (IT) systems
- SFI/CCC

Supervisors are provided with training that is specific to their role including:

- HR policy/procedures
- Progressive discipline
- Family sick leave policy
- Performance Evaluations

C. Agency of Human Services Policies

During the first week of orientation, all new employees must review the AHS policies. The Office of Public Guardian supervisor will identify specific policies to be reviewed, including those that require signature.

Interpretive and Translation Services: The Agency maintains three forms of interpretive and translation services to assist its staff in providing services to persons whose native language is not English, and whose proficiency in English is limited. Those services are:

- In-person Interpretive Services: The Agency maintains contracts to provide in-person interpretive services throughout the state. A list of contracted providers can be found at: <http://vocrehab.vermont.gov/programs/rcd/interpreters/vtinterpreters>
- Written Translation Services: The State, through the Department of Information & Innovation, maintains a contract to provide translation of documents, brochures, application forms and any other needed written materials for all state agencies and departments.
- Telephonic Services: The State, through the Department of Information & Innovation, maintains a contract for assistance to allow all state agencies and departments to access interpretive and translation services telephonically.

D. Office of Public Guardian Supervision

All guardians are assigned a supervisor whose role is to support the guardian to be able to do his or her job as well as manage requests for time off, complete evaluations, fill in as needed for guardians, oversee paperwork compliance, etc.. To do this, supervisors meet formally and informally with staff. Most supervision occurs informally at least weekly, in person or by telephone call.

In order to be as available as possible to the guardians they supervise, all supervisors give priority to responding to calls, e-mails, or requests to meet from the guardians they supervise.

Supervisors approve requests for annual leave and are responsible for assuring that caseloads are covered when an employee is out on vacation or other leave.

Supervisors are responsible for reviewing and signing off on the time-sheets, expense sheets, and monthly Therapeutic Case Management logs, and addressing performance or other issues with the guardians they supervise.

Another role of the supervisor is to evaluate the guardians using the State of Vermont process, which requires a six-month probationary period for new employees, with a Performance Evaluation at the end of the six-month time period, and an annual Performance Evaluations thereafter.

Evaluations are written by the supervisor, reviewed, and signed by the Program Director and Division Director (Appointing Authority) before a meeting and evaluation discussion is held with the employee. The supervisor's evaluation considers the guardian's self-evaluation and peer agency evaluation.

If there is a performance issue, the supervisor is expected to discuss it with the employee. Serious or repeated problems are handled in consultation with the Program Director and/or Division Director, and the Agency of Human Services Human Resources officer. There are special rules for progressive discipline in case of problematic performance.

A checklist is available to assist the OPG Supervisors in performing their responsibilities. This checklist was developed to provide Senior Guardians in 2009 to provide a more consistent method of gathering information necessary to complete annual performance evaluations for guardians under their supervision, and to support the supervisor and the staff under their supervision.

It is recommended the supervisory staff meet in-person at least quarterly with each guardian they supervise, but more frequent phone and email contact is expected. More frequent supervisory sessions may occur at the discretion of the supervisor or as the need arises. It is strongly recommended that supervisors periodically accompany guardians on client in-person/home visits.

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

- Review of documentation for case logs re: client contacts
- Annual client reviews and probate review filings
- Guardianship assessment plan for new clients (due 90 days after guardianship order)
- Case files/notes – do files contain key components and current notes
- The supervisor will request that the guardian bring one or two case files for review during supervision, for case consultation, etc.
- Discussion about the guardian's caseload: How is it going? Are their stressors/concerns? What are they proud of?
- Request/require attendance at regional and full OPG meetings
- Discuss, review/approve work schedules, use of leave time for vacations, sick leave, and scheduling
- Discuss the guardian's professional goals, plans, as needed
- 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.

PART TWELVE: Representative Payee Services

A. Role of Office of Public Guardian's Representative Payee Services

1. Case Records

Limited Representative Payee services are available for individuals who have a guardian or as an alternative to guardianship. The Representative Payee, separate from the guardian, is required to maintain a case record for each person for whom they are the Representative Payee. For each person served by the Representative Payee, a case record must set up using the following guidance:

a. Case File Set Up

- Use sturdy three ring binders at least 2" wide
- Binder sections separated by color coded tabs and labeled
- The primary case file records may be retained in a secure desk drawer
- File Sections/Contents should be filed with the most current information at the front of the section.

Following is a list of documents that must be available in the case record as well as document retention timeframe.

b. Checking Account

Documents

- checking account statements
- certificate of deposit statement
- savings account statement
- monthly check register
- outstanding checks journal
- daily balance journal
- monthly transactions journal

Retention

Checking account documents must be maintained in the case record for seven years.

c. Payment Related Documents

Documents

- funds requests
- check stubs
- vendor files (bills and invoices)

Retention

- Payment related documents must be retained in the case record for seven years.

d. Deposit Documentation

Documents

- direct deposit advice
- cash receipts journal
- adjustment forms
- void/ruined checks

Retention

- Deposit documentation must be retained in the case record for seven years

e. Completed Agency Reviews

Types of Reviews

- Representative Payee reviews
- Housing reviews
- Economic Services reviews
- Medicaid reviews

f. Retention of reviews

- All reviews have a statute of limitations of three years, three months, 15 days during which time all reviews must be retained in the person's file.

g. Tax Related Documents

Documents

- Tax Returns
- W-2 forms
- 1099s

Retention

- All tax documents must be retained for a period of seven years.

h. Consumer Income and Expense

Documents

- Month records accounting for the use of client funds
- Receipts to support client expenditures

Retention

- Monthly accounting records and receipts must be retained for a period of three years, three months, and 15 days per the statute of limitations.

i. Explanation of Benefits

Documents

- Medicare Parts A, B, D utilization notices.

Retention

- These notices should be retained in the case record for the current and prior calendar years.

j. Routine Consumer Financial Correspondence

Documents

- Letter, notices, etc.
- Benefit notices from agencies

Retention

- Letters and notices must be retained for a period of three years, three months, and 15 days per the statute of limitations.

PART THIRTEEN: Caseload Assignments / Conflict of Interest

A. Caseload Assignment Considerations

Caseload assignments are made by the Director of the Office of Public Guardian, in consultation with the regional OPG Supervisor. 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 Legal Aid, attorneys, home providers, case managers, service coordinators, etc. may be considered, if possible.

When considering caseload assignments, the Office of Public Guardian takes into consideration geography, current commitments, and caseload levels. When assigning caseloads, we consider the following:

- Is the guardianship a good match for the client and the particular skills, knowledge and abilities of the guardian?
- Geography – Is it possible to provide guardianship services in both an efficient and effective manner? Generally, this means the client must be within a reasonable travel distance for the guardian.
- 'Economy of scale'- That is, if the OPG has more than one resident in a home or location it may make sense to assign the same guardian to serve both individuals; or if there is a close familial relationship (siblings, mother/son, etc.)
- Potential conflict of interest – However, IF any conflict of interest or potential for the same is apparent, the OPG may decide to assign different guardians where conflict may arise or emerge.

B. Maximum Caseload Guidelines

Outlined below are the maximum caseload guidelines; note that these are given for reference and are intended solely as guidelines:

- Developmental Services clients: 25 to 30
- Elderly clients – With financial powers: 20 to 25
- Elderly clients – Without financial powers 25 to 30
- Mixed Caseload of DS and elders: 20 to 30
- OPG Field Supervisors: 20 to 25

These guidelines may be adjusted. For example:

If a guardian has a current caseload with several clients in major crisis, or has one or more assignment(s) that require significantly longer driving time, a smaller caseload may be appropriate.

OR

If a guardian has an unusually stable caseload, whose clients receive strong agency or other community supports, this may justify slightly higher caseloads.

OR

If staff take an extended family or medical leave or the OPG experiences one or more staff vacancy(ies), 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 reassignment unless the person requests a change, the person moves far away, a guardian's caseload has become too large, OR a conflict has emerged. Many people have had the same guardian for 15-20 years, some even longer, and often the guardian has known the individual longer than anyone else involved in his or her life.

APPENDICES

Appendix A

<http://www.ddas.vermont.gov/ddas-programs/programs-guardianship/programs-guardian-addl-webpages/programs-guardianship-private-adults>

Private Guardianship for Mentally Disabled Adults

A private guardian is a person appointed by the Probate Court to assume the responsibility for making decisions on behalf of another person (the court calls this person a "ward") whom the court has found is unable to make those decisions independently.

Who Can Be a Guardian?

A private guardian may be a family member, a friend, an attorney or other interested person. The Probate Court may appoint a person who is not a resident of Vermont as a guardian if the court thinks the person is qualified to do the job.

The Probate Court will not appoint a person as guardian if he or she:

- formerly served as *guardian ad litem* in the case, or
- operates or is an employee of a boarding home, residential care home, nursing home, group home, or other similar facility in which the ward resides, or
- has another conflict of interest.

How is a Guardianship Started?

An involuntary guardianship is initiated through the filing of a petition with the Probate Court by an interested party (called the petitioner) such as a family member, social worker, or nursing home representative. The court then orders an evaluation by a mental health or mental retardation professional of the prospective ward, and a report submitted within 30 days. The report must describe the proposed ward's abilities and disabilities in detail, and make recommendations about the need for and extent of a guardianship based upon the criteria set out in the law.

The court must notify the proposed ward in writing that a petition has been submitted. The court must also see that the proposed ward is represented by a lawyer, and must appoint one if necessary. The court may appoint a guardian ad litem for a proposed ward 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 ward's legal interests are adequately protected during the court process; the *guardian ad litem's* role does not extend beyond the scope of the proceedings.

The hearing is held between 15 and 30 days from the date the evaluation is filed with the court. The proposed ward, the petitioner, and all interested parties named in the petition receive notice

of the hearing. In general, interested parties may testify, and the proposed ward 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 or not the proposed ward meets the legal criteria for needing a guardian. If so, an order is issued listing the specific powers and duties of the guardian.

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 ward. The court may create a total or limited guardianship. Thus, some guardians have responsibility for all personal and financial matters of the ward, and other guardians only have authority over particular aspects of the ward's life, such as medical decisions or finances.

- [**A Guide to the Responsibilities of Guardians of Adults with Mental Disabilities, Office of Public Guardian**](#)

This booklet has been prepared by the Office of Public Guardian to help private guardians and people considering becoming guardians to understand the role and responsibilities of guardianship.

How do I get a form to Petition for Guardianship?

You can get a form from any [Probate Court office](#) or online (all three forms are needed):

- [**Petition to Appoint a Guardian for a Mentally Disabled Adult \(PC72\)**](#)
- [**Statement of Proposed Ward's Assets & Income \(PC73\)**](#)
- [**List of Interested Persons for a Guardianship \(PC75\)**](#)

These forms start the process for private guardianship and for public guardianship for people over 60. NOTE: There is a [different petition](#) and a different process for appointing a public guardian for a person with developmental disabilities.

Are having difficulty accessing any of the above listed forms"?

If your web browser shows that the form has downloaded completely but you do not see the form, click the "Back" button on your web browser and click the form link again. If the form still does not appear you can access the VT Judiciary Probate Court Forms website directly at: <http://vermontjudiciary.org/eforms/probate.aspx>. From this page you may access the above listed forms directly.

Why is it Called Involuntary Guardianship?

By law, all guardianships in Vermont for adults with mental disabilities must follow the procedures for involuntary guardianship. In many cases, the individual may agree that he or she would like to have a guardian, but the procedures for independent review are followed anyway. This includes the appointment of an attorney for the proposed ward, an independent evaluation, and court review of the person's need for a guardian. This is because, in the past, there was a lot of abuse of the guardianship process for individuals with mental disabilities who didn't

understand the authority of a guardian, and didn't understand their right to object to guardianship.

Annual Reports of Guardian

- **Personal status report.**

One year after the appointment, and annually thereafter, guardians with personal powers must file with the Probate Court a report which summarizes the progress and condition of the ward, including descriptions of his or her health, medical care, residence, education, employment, and other programs. The report must also explain to the court how the guardian carried out the duties and powers contained in the order, and must include the guardian's opinion as to the ward's continuing needs for a guardian. Ordinarily the court sends a blank form to the guardian. The form is available from the Probate Court or [online](#).

- **Financial accounting.**

A guardian with financial responsibilities must file an annual report with the Probate Court. Ordinarily the court sends a blank form to the guardian. The form is available from the Probate Court or [online](#).

What If I Want to Change or End My Guardianship?

A person who is under a guardianship and wants to end or change the guardianship can get legal assistance from [Vermont Legal Aid](#).

Appendix B

<http://www.ddas.vermont.gov/ddas-programs/programs-guardianship/programs-guardian-addl-webpages/programs-guardianship-adult-public>

Public Guardianship for Mentally Disabled Adults Age 60 or Over

A Public Guardian may be appointed by the Probate Court for a mentally disabled adult **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 may be appointed.

To find that a person needs a guardian, the Probate Court must find the proposed ward to be either mentally ill (dementia is a qualifying condition) or developmentally disabled, **AND** unable to manage his/her own personal care and/or financial affairs without the supervision of a guardian. Eccentricity or poor judgment alone are **NOT** criteria for guardianship, nor is guardianship appropriate if less invasive solutions to a senior's well-being can be implemented.

The procedures for appointing a Public Guardian for a mentally disabled adult age 60 or over are the same as for appointing a Private Guardian.

- [How is Guardianship Started?](#)
- [How do I get a form to Petition for Guardianship?](#)

Based on the ward's needs, the Court grants the guardian one or more of six guardianship powers, which give the guardian authority to make certain decisions on behalf of the ward, most often involving financial issues, medical needs, and/or placement decisions. Under the supervision of the Court, the guardian maintains contact with the ward, monitors any care or services the ward may be receiving, and encourages the maximum independence and self-determination of the ward.

For more information on public guardianship for mentally disabled adults age 60 or over contact:

Mike Attley
Townsend, VT
Phone: (802) 365-4478
E-mail: mike.attley@state.vt.us

OR

Jackie Rogers
Department of Disabilities, Aging &
Independent Living
Division of Developmental Services
81 River Street, Suite 208
Montpelier, VT 05609-2210
Phone: (802) 828-3623
E-mail: jackie.rogers@state.vt.us

Appendix C

<http://www.leg.state.vt.us/statutes/fullchapter.cfm?Title=18&Chapter=215>

Title 18: Health

Chapter 215: GUARDIANSHIP SERVICES FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES

§ 9301. Policy

It is the policy of the state of Vermont to assure that citizens with developmental disabilities receive such protection and assistance as is necessary to allow them to live safely within the communities of this state. In furtherance of this policy, this chapter is enacted to permit the supervision of those individuals who are unable to provide for their own needs on account of developmental disabilities and to protect such persons from violations of their human and civil rights. It is the purpose of this chapter to limit the state's guardianship of people with developmental disabilities who are living in the community to the extent necessary to ensure their safety and well-being. (Added 1977, No. 192 (Adj. Sess.), § 1; amended 2001, No. 43, § 1.)

§ 9302. Definitions

As used in this chapter:

- (1) "Person with developmental disabilities" means:
 - (A) a person with a severe, chronic disability that must arise before the person reaches the age of 18, and results in:
 - (i) mental retardation, autism, or pervasive developmental disorder; and
 - (ii) deficits in adaptive behavior at least two standard deviations below the mean for a normative comparative comparison group; or
 - (B) a person with a developmental disability who was receiving services on July 1, 1996.
- (2) "Commissioner" means the commissioner of disabilities, aging, and independent living.
- (3) "Near relative" means a spouse, parent, step-parent, brother, sister, or grandparent.
- (4) "Interested person" means a responsible adult who has a direct interest in a person with developmental disabilities and includes, but is not limited to, the person with developmental disabilities, a near relative, guardian, public official, social worker, or clergyman.
- (5) "Person in need of guardianship" means a person who:

- (A) has developmental disabilities within the meaning of this chapter;
 - (B) is unable to personally exercise some or all of the powers and responsibilities described in section 9310 of this title; and
 - (C) is not receiving the active assistance of a responsible adult to carry out the powers and responsibilities described in section 9310 of this title.
- (6) "Guardianship" means the legal status of a person with developmental disabilities who is subject to the commissioner's exercise of some or all of the powers listed in section 9310 of this title.
- (7) [Deleted.]
- (8) "Qualified developmental disabilities professional" means a psychologist, physician, registered nurse, educator, or social worker with specialized training or at least one year of experience in working with people with developmental disabilities.
- (9) "Respondent" means a person who is the subject of a petition filed pursuant to section 9305 of this title.
- (10) "Department" means the department of disabilities, aging, and independent living. (Added 1977, No. 192 (Adj. Sess.), § 1; amended 1989, No. 187 (Adj. Sess.), § 5; 1995, No. 174 (Adj. Sess.), § 3; 2001, No. 43, § 1; 2005, No. 174 (Adj. Sess.), § 49.)

§ 9303. Jurisdiction and venue

- (a) The family division of the superior court shall have exclusive jurisdiction over all proceedings brought under the authority of this chapter. Proceedings under this chapter shall be commenced in the family division of the superior court for the unit in which the person with developmental disabilities is residing.
- (b) (1) The probate division of the superior court shall have concurrent jurisdiction to appoint the commissioner to serve as a temporary guardian for a person in need of guardianship when:
- (A) a petition has been filed pursuant to 14 V.S.A. § 3063;
 - (B) the probate division of the superior court finds that the respondent is a person in need of guardianship as defined in subdivision 9302(5) of this title; and
 - (C) no suitable private guardian can be located.
- (2) Within 60 days after appointment as a temporary guardian, the commissioner shall file a petition in the family division of the superior court for appointment under this chapter and for modification or termination of the probate division order. (Added 1977, No. 192 (Adj. Sess.), § 1; amended 2001, No. 43, § 1; 2009, No. 154 (Adj. Sess.), § 154; No. 154 (Adj. Sess.), § 154a, eff. Feb. 1, 2011.)

§ 9304. Eligibility for guardianship of the person

Guardianship may be provided to any person with developmental disabilities who:

- (1) is at least 18 years of age; and
- (2) is in need of supervision and protection for the person's own welfare or the public welfare. (Added 1977, No. 192 (Adj. Sess.), § 1; amended 2001, No. 43, § 1.)

§ 9305. Petition for guardianship

Any interested person with knowledge of the facts alleged may request the state's attorney having jurisdiction to file a petition with the family division of the superior court alleging that person is developmentally disabled and in need of guardianship. The state's attorney shall file the petition unless it clearly appears that the petition will be insufficient to support an action under this chapter. The petition shall set forth:

- (1) The name, address, and telephone number of the interested person who requested the filing of the petition, and the nature of his or her interest in the person alleged to have developmental disabilities;
- (2) The name, address, telephone number, and age of the respondent and the name, address, and telephone number of any near relative of the respondent and the name of any guardian or person holding a power of attorney of the person;
- (3) The reasons and the supporting facts why guardianship is needed;
- (4) The petition shall be limited to information that is relevant to the respondent's need for guardianship. (Added 1977, No. 192 (Adj. Sess.), § 1; amended 2001, No. 43, § 1; 2009, No. 154 (Adj. Sess.), § 238.)

§ 9306. Comprehensive evaluation

- (a) The family division of the superior court shall mail a copy of any petition filed pursuant to section 9305 of this title to the commissioner, who shall promptly arrange for the preparation of a comprehensive evaluation of the respondent. The evaluation shall include information regarding the respondent's developmental and social functioning which is relevant to the person's need for guardianship. The evaluation 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, and shall include information regarding the availability of one or more responsible adults to assist the individual in decision-making.
- (b) The evaluation shall be prepared by a qualified developmental disabilities professional. The evaluation shall be completed within 40 days of the court's service of the petition upon the commissioner unless the time period is extended by the court for cause. The commissioner shall send the request for evaluation to the evaluator at least 30 days before it is due. The commissioner shall provide for reimbursement of the costs of the evaluation.

(c) The department shall send a copy of the evaluation to the court, the state's attorney, the director of guardianship services, and to counsel for the respondent. The evaluation is a confidential document, and shall not be further disclosed by the court and the parties without the consent of the respondent or a person authorized to act on behalf of the respondent, except that the department shall release the evaluation to a developmental services agency, if necessary, for the purpose of obtaining or improving services to the person.

(d) The evaluation shall not be used as evidence in any other judicial proceeding without the consent of the respondent or the respondent's guardian or upon order of the court. (Added 1977, No. 192 (Adj. Sess.), § 1; amended 2001, No. 43, § 1; 2009, No. 154 (Adj. Sess.), § 238.)

§ 9307. Notice of petition and hearing

Within five days of filing the petition, the court shall fix a time and place for hearing and shall mail a copy of the petition and notice of hearing to the respondent, the respondent's counsel, the guardian for the respondent, if any, the interested person who requested the filing of the petition, the commissioner, the state's attorney, and such other persons as the court determines. The notice of hearing shall be mailed to the respondent's near relatives. The hearing shall be held not fewer than 20 nor more than 30 days after the filing of the evaluation with the court. The hearing may be continued for good cause shown for not more than 15 additional days. (Added 1977, No. 192 (Adj. Sess.), § 1; amended 2001, No. 43, § 1.)

§ 9308. Appointment of counsel

Upon the filing of the petition, the court shall appoint counsel for the respondent, and shall notify the respondent of the name, address, and telephone number of the appointed counsel. Compensation shall be paid by the department to counsel assigned by the court, any rule or law to the contrary notwithstanding. Counsel shall receive a copy of the petition and comprehensive evaluation and such other documents as may be received or issued by the court. Counsel shall consult with respondent prior to the hearing and, to the maximum extent possible, explain to the respondent the meaning of the proceedings and of all relevant documents. (Added 1977, No. 192 (Adj. Sess.), § 1; amended 1979, No. 167 (Adj. Sess.), § 2; 1989, No. 187 (Adj. Sess.), § 5; 1995, No. 174 (Adj. Sess.), § 3; 2001, No. 43, § 1.)

§ 9309. Hearing and appeal

(a) The respondent, the state's attorney, and all other persons to whom notice has been given pursuant to section 9307 of this title may attend the hearing and testify. The court may in its discretion receive the testimony of any other person. The respondent and state's attorney may subpoena, present, and cross-examine witnesses, including those who prepared the comprehensive evaluation. The court may exclude any person not necessary for the conduct of the hearing. The state's attorney shall consult with the interested person who requested the filing of the petition regarding the facts of the case.

(b) The hearing shall be conducted in a manner consistent with orderly procedure and in a physical setting not likely to have a harmful effect on the mental or physical health of the

respondent. In all proceedings, the court shall have taken and preserved an accurate record of the proceedings. The court shall not be bound by the evidence contained in the comprehensive evaluation, but shall make its determination upon the entire record. In all cases, the court shall make specific findings of fact, state separately its conclusions of law, and direct the entry of an appropriate judgment. The general public shall be excluded from hearings under this chapter, and only the parties, their counsel, the interested person who requested the filing of the petition, witnesses and other persons accompanying a party for his or her assistance, and such other persons as the court finds to have a proper interest in the case or in the work of the court may be admitted by the court. The proceedings of

the hearing shall be confidential, and a record of the proceedings may not be released without the consent of the respondent or the respondent's guardian.

(c) The state's attorney shall appear and present evidence in support of the petition. The person who requested the filing of the petition may be represented by private counsel in any proceedings brought under this chapter.

(d) If, upon completion of the hearing and consideration of the record, the court finds that the respondent is not a person in need of guardianship, as defined in subdivision 9302(5) of this title, it shall dismiss the petition and seal the records of the proceedings.

(e) The court shall enter judgment specifying the powers of the commissioner pursuant to section 9310 of this title if, upon completion of the hearing and consideration of the record, the court finds that the petitioner has proved by clear and convincing evidence that the respondent is:

(1) a person with developmental disabilities;

(2) at least 18 years of age; and

(3) [Deleted.]

(4) in need of guardianship for his or her own welfare or the public welfare.

(f) The court may grant or restrict the powers of guardianship to the commissioner. 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.

(g) Any party to the proceeding before the family division of the superior court may appeal the court's decision. The appeal shall be taken in such manner as the supreme court may by rule provide for appeals from the family division of the superior court. (Added 1977, No. 192 (Adj. Sess.), § 1; amended 2001, No. 43, § 1; 2009, No. 154 (Adj. Sess.), § 238.)

§ 9310. Powers of commissioner as guardian

(a) The court may appoint the commissioner guardian of the respondent if it determines that a guardian is needed to supervise and protect the respondent through the exercise of any or all of the following powers:

- (1) The power to exercise general supervision over the respondent. 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) The power to approve or withhold approval of any contract, by or in the name of the respondent;
- (3) The power to obtain legal advice and to commence or defend against judicial actions in the name of the respondent;
- (4) 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 respondent, or to withhold consent for initiation or continuation of treatment which does not promote the health or well-being of the respondent. In exercising this power, the commissioner 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 department's ethics committee. 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.

(b) Nothing in this chapter shall give the commissioner authority to place a person with developmental disabilities in a state hospital except pursuant to chapter 181 of this title.

(c) The commissioner shall exercise his or her supervisory authority over the respondent in a manner which is least restrictive of the person's personal freedom consistent with the respondent's need for supervision and protection. (Added 1977, No. 192 (Adj. Sess.), § 1; amended 2001, No. 43, § 1.)

§§ 9311, 9312. Repealed. 2001, No. 43, § 1.

§ 9313. Duties of commissioner when providing guardianship services

(a) When providing guardianship services to a person with developmental disabilities, the commissioner 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 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.

(b) In addition to the supervisory powers vested in the commissioner by the court pursuant to section 9310 of this title, the commissioner 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:

- (1) Education services for a person with developmental disabilities who is of school age;
- (2) Residential services for any person with developmental disabilities who lacks adequate or appropriate housing or residential supervision;
- (3) Medical and dental services as needed;
- (4) Therapeutic and habilitative 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;
- (5) Counseling and social services;
- (6) Counseling and assistance in the use of and handling of money. (Added 1977, No. 192 (Adj. Sess.), § 1; amended 2001, No. 43, § 1.)

§ 9314. Annual review

(a) The commissioner shall prepare an annual review of the social adjustment and progress of every person who is receiving guardianship services under this chapter. A copy of the review shall be kept on file by the commissioner and shall be made available upon the request of the person with developmental disabilities, and such other people as receive the written permission of the person or the commissioner.

(b) The commissioner shall annually review the legal status of each person receiving services under this chapter. If the commissioner determines that the annual review of social adjustment and progress warrants a modification or termination of guardianship services for the person, the commissioner shall petition the family division of the superior court pursuant to section 9316 of this title for the appropriate relief. (Added 1977, No. 192 (Adj. Sess.), § 1; amended 2001, No. 43, § 1; 2009, No. 154 (Adj. Sess.), § 238.)

§ 9315. Review of commissioner's decision

A person who is receiving services under this chapter may appeal a decision of the commissioner in accordance with 3 V.S.A. § 3091 or by petition to the family division of the superior court. (Added 1977, No. 192 (Adj. Sess.), § 1; amended 2001, No. 43, § 1; 2009, No. 154 (Adj. Sess.), § 238.)

§ 9316. Modification or termination of guardianship services

- (a) The commissioner shall provide guardianship services in accordance with the order of the probate division or family division of the superior court until termination or modification thereof by the court.
- (b) The commissioner, the person with developmental disabilities, or any interested person may petition the appointing court, if it exists, or the superior court for the unit where the person resides to modify or terminate the judgment pursuant to which the commissioner is providing guardianship. The petitioner, or the commissioner as petitioner, and the respondent shall be the parties to a petition to modify or terminate guardianship.
- (c) Notice and hearing on the petition shall proceed in the manner set forth in sections 9307-9309 of this title. (Added 1977, No. 192 (Adj. Sess.), § 1; amended 2001, No. 43, § 1; 2009, No. 154 (Adj. Sess.), § 155; No. 154 (Adj. Sess.), § 155a, eff. Feb. 1, 2011.)

§ 9317. General provision

The commissioner may delegate his or her powers and duties under this chapter to staff within the department, and may adopt, pursuant to 3 V.S.A. chapter 25, such rules and regulations necessary for the proper and efficient administration of this chapter. (Added 1977, No. 192 (Adj. Sess.), § 1; amended 2001, No. 43, § 1.)

Appendix D

<http://www.leg.state.vt.us/statutes/fullsection.cfm?Title=14&Chapter=111&Section=02671>

Title 14: Decedents' Estates and Fiduciary Relations **Chapter 111: GUARDIANSHIP** **14 V.S.A. § 2671. Voluntary Guardianship**

§ 2671. Voluntary guardianship

- (a) Any person of at least 18 years of age, who desires assistance with the management of his or her affairs, may file a petition with the probate division of the superior court requesting the appointment of a guardian.
- (b) The petition shall:
 - (1) state that the petitioner understands the nature, extent, and consequences of the guardianship;
 - (2) specify which of the powers of the guardian as set forth in section 3069 of this title petitioner requests to be exercised by the guardian, and;
 - (3) specify which individual the petitioner requests to be appointed guardian.
- (c) A person who requests that a voluntary guardian be appointed shall appear before the court, if physically able. If not physically able to appear, the petition shall be accompanied by a letter from a physician or qualified mental health professional stating that the petitioner understands the nature, extent and consequences of the guardianship requested and the procedure for revoking the guardianship. The letter may support a finding by the court that the petitioner does, in fact, understand the nature, extent and consequences of the guardianship requested and the procedure for revoking the guardianship.
- (d)(1) The court shall hold a hearing on the petition, with notice to the petitioner and the proposed guardian.
- (2) At the hearing, the court shall explain to the petitioner the nature, extent, and consequences of the proposed guardianship and determine if the petitioner agrees to the appointment of the named guardian.
- (3) At the hearing, the court shall explain to the petitioner the procedures for terminating the guardianship.
- (4) After the hearing, the court shall make findings on the following issues:
 - (A) whether the petitioner is uncoerced;

(B) whether the petitioner understands the nature, extent, and consequences of the proposed guardianship; and

(C) whether the petitioner understands the procedures for terminating the guardianship.

(e) The court may order that the petitioner be evaluated by a person who has specific training and demonstrated competence to evaluate the petitioner. The scope of the evaluation shall be limited to whether the petitioner understands the nature, extent and consequences of the guardianship requested and the procedures for revoking the guardianship.

(f) If after the hearing the court finds that the petitioner is uncoerced, understands the nature, extent and consequences of the proposed guardianship, and understands the procedures for terminating the guardianship, it shall enter judgment specifying the powers of the guardian as requested in the petition. The court shall mail a copy of its order to the petitioner and the guardian, and it shall attach to the order a notification to the petitioner setting forth the procedures for terminating the guardianship.

(g) If the court finds that the petitioner does not meet the criteria set forth in subsection (d) of this section, it shall dismiss the petition; provided, however, that if the court finds that the petitioner does not understand the nature, extent, and consequences of the guardianship and in the court's opinion requires assistance with the management of his or her personal or financial affairs, the court may treat the petition as if filed pursuant to section 3063 of this title.

(h) The person under guardianship may, at any time, file a motion to revoke the guardianship. Upon receipt of the motion, the court shall give notice as provided by the rules of probate procedure. Unless the guardian files a motion pursuant to section 3063 of this title within ten days from the date of the notice, the court shall enter judgment revoking the guardianship and shall provide the ward and the guardian with a copy of the judgment.

(i)(1) Any person interested in the welfare of the person under guardianship, as defined by section 3061 of this chapter, may petition the court where venue lies for termination of the guardianship. Grounds for termination of the guardianship shall be:

(A) failure to render an account after having been duly cited by the court;

(B) failure to perform an order or decree of the court;

(C) a finding that the guardian has become incapable of or unsuitable for exercising his or her powers; or

(D) the death of the guardian.

(2) The court may also consider termination of the guardianship on the court's own motion.

(j) The guardian shall file an annual report with the appointing court within 30 days of the anniversary date of appointment containing the information required by section 3076 of this title.

(k) The court shall mail an annual notice on the anniversary date of the appointment of the guardian to the person under a guardianship setting forth the procedure for terminating the guardianship and the right of the person under guardianship to receive and review the annual reports filed by the guardian.

(l) At the termination of a voluntary guardianship, the guardian shall render a final accounting as required by section 2921 of this title.

(m) The guardian shall not be paid any fees to which the guardian may be entitled from the estate of the person under guardianship until the annual reports or final accounting required by this section have been filed with the court. (Amended 1979, No. 76, § 3; 1985, No. 144 (Adj. Sess.), § 123; 2009, No. 97 (Adj. Sess.), § 9; No. 154 (Adj. Sess.), § 238a, eff. Feb. 1, 2011.)

Appendix E

Vermont Advance Directive for Health Care Prepared by the Vermont Ethics Network, July 2011

Explanation & Instructions

You have the right to:

1. Name someone else to make health care decisions for you when or if you are unable to make them yourself.
2. Give instructions about what types of health care you want or do not want.

It is important to talk with those people closest to you and with your health care providers about your goals, wishes and preferences for treatment.

You may use this form in its entirety or you may use any part of it. For example, if you only want to choose an agent in Part One, you may fill out just that section and then go to Part Five to sign in the presence of appropriate witnesses.

You are free to use another form so long as it is properly witnessed. More detailed forms providing greater options and information regarding mental health care preference can be found on the VEN website at www.vtethicsnetwork.org.

Part ONE of this form allows you to name a person as your “**agent**” to make health care decisions for you if you become unable or unwilling to make your own decisions. You may also name alternate agents. You should choose someone you trust, who will be comfortable making what might be hard decisions on your behalf. They should be guided by your values in making choices for you **and agree** to act as your agent. You may fill out the Advance Directive form stating your medical preferences *even if you do not identify an agent*. Medical providers will follow your directions in the Advance Directive without an agent to their best ability, but having a person designated as your agent to make decisions for you will help medical providers and those who care for you make the best decisions in situations that may not have been detailed in your Advance Directive. According to Vermont law, next-of-kin will not automatically make decisions on your behalf if you are unable to do so. That is why it is best to appoint someone of your choosing in advance.

Part TWO of this form lets you state **Treatment Goals & Wishes**. Choices are provided for you to express your wishes about having, not having, or stopping treatment under certain circumstances. Space is also provided for you to write out any additional or specific wishes based on your values, health condition or beliefs.

Part THREE of this form lets you express your wishes about **Limitations of Treatment**. These treatments include CPR, breathing machines, feeding tubes, and antibiotics. There is space for you to write any additional wishes. NOTE: If you DO NOT want CPR, a breathing machine, a feeding tube, or antibiotics, please discuss this with your doctor, who can complete a **DNR/COLST order** (Do Not Resuscitate/ Clinician Order for Life Sustaining Treatment) to ensure that you do not receive treatments you do not want, especially in an emergency.

Emergency Medical Personnel are required to provide you with life-saving treatment unless they have a signed DNR/COLST order specifying some limitation of treatment. If there is no DNR/COLST order the emergency medical team will perform CPR as they will not have time to consult an Advance Directive, your family, agent, or physician.

Part FOUR of this form allows you to express your wishes related to **organ/tissue donation & preferences for funeral, burial and disposition** of your remains.

Part FIVE is for **signatures**. You must sign and date the form in the presence of two adult witnesses. The following persons may not be witnesses: your agent and alternate agents; your spouse or partner; parents; siblings; reciprocal beneficiary; children or grandchildren. You should give copies of the completed form to your agent and alternate agent(s), to your physician, your family and to any health care facility where you reside or at which you are likely to receive care. Please note who has a copy of your Advance Directive so it may be updated if your preferences change. You are also encouraged to send a copy of your Advance Directive to the Vermont Advance Directive Registry with the Registration Agreement Form found at the end of this document.

You have the right to revoke all or part of this Advance Directive for Health Care or replace this form at any time. If you do revoke it, all old copies should be destroyed. If you make changes and have sent a copy of your original document to the Vermont Advance Directive Registry, be sure to send them a new copy or a notification of change form with information needed to update your Advance Directive.

Vermont Advance Directive for Health Care

Your Name _____ Date of Birth _____ Date _____
Address _____ City _____
State _____ Zip _____

Part One: Your Health Care Agent

Your health care agent can make health care decisions for you when you are unable or unwilling to make decisions for yourself. You should pick someone that you trust, who understands your wishes and *agrees* to act as your agent.

I appoint this person to be my health care **AGENT**:

Name _____
Address _____
Home Phone _____ Work Phone _____
Cell Phone _____ Email _____

(If you appoint co-agents, list them above or on a separate sheet of paper)

If this agent is unavailable, unwilling or unable to act as my agent, I appoint this person as my **ALTERNATE AGENT**:

Name _____
Address _____
Home Phone _____ Work Phone _____
Cell Phone _____ Email _____

Others who can be consulted about medical decisions on my behalf include:

Primary care provider(s):

Name _____ Phone _____
Address _____
Name _____ Phone _____
Address _____

Those who should *NOT* be consulted include: _____

I want my Advance Directive to start:

- ☐ When I cannot make my own decisions ☐ Now
- ☐ When this happens: _____

Part Two: Health Care Goals and Spiritual Wishes

My Overall Health Care Goals Include:

- ☐ I want to have my life sustained as long as possible by any medical means.
- ☐ I want treatment to sustain my life only if I will:
- ☐ be able to communicate with friends and family.
 - ☐ be able to care for myself.
 - ☐ live without incapacitating pain.
 - ☐ be conscious and aware of my surroundings.
- ☐ I only want treatment directed toward my comfort.

Additional goals, wishes, or beliefs I wish to express include: _____

People to notify if I have a life-threatening illness: _____

If I am dying it is important for me to be (check choice):

- ☐ At home ☐ In the hospital ☐ Other: _____ ☐ No preference

My Spiritual Care Wishes Include:

My Religion/Faith _____

Place of Worship _____ Phone _____

Address _____

The following items or music or readings would be a comfort to me:

Part Three: Limitations of Treatment

You can decide what kind of treatment you want or do not want at the end of your life. These wishes can apply to all situations or to situations that you specify. Regardless of the treatment limitations stated you have the right to adequate management for pain and other symptoms (nausea, fatigue, shortness of breath) related to your illness. Unless treatment limitations are stated, the medical teams are required and expected to do everything possible to save your life.

1. If my heart stops: (choose one)

- ☐ I DO want CPR done to try to restart my heart.
- ☐ I DON'T want CPR done to try to restart my heart.

CPR means cardio (heart)-pulmonary (lung) resuscitation, including vigorous compressions of the chest, use of electrical stimulation, medications to support or restore heart function, and rescue breaths (forcing air into your lungs).

2. If I am unable to breathe on my own: (choose one)

- ☐ I DO want a breathing machine without any time limit.
- ☐ I want to have a breathing machine for a short time to see if I will survive or get better.
- ☐ I DO NOT want a breathing machine for ANY length of time.

“Breathing machine” refers to a device that mechanically moves air into and out of your lungs such as a ventilator.

3. If I am unable to swallow enough food or water to stay alive: (choose one)

- ☐ I DO want a feeding tube without any time limits
- ☐ I want to have a feeding tube for a short time to see if I will survive or get better.
- ☐ I DO NOT want a feeding tube for any length of time.

Note: If you are being treated in another state your agent may not automatically have the authority to withhold or withdraw a feeding tube. If you wish to have your agent decide about feeding tubes please check the box below.

- ☐ I authorize my agent to make decisions about feeding tubes.

4. If I am terminally ill or so ill that I am unlikely to get better: (choose one)

- ☐ I DO want antibiotics or other medication to fight infection.
- ☐ I DON'T want antibiotics or other medication to fight infection.

If you have stated you DO NOT want CPR, a breathing machine, a feeding tube, or antibiotics under any circumstances, please discuss this with your doctor who can complete a DNR/COLST form to ensure you don't receive treatments you don't want, particularly in an emergency situation. A DNR/COLST order will be honored outside of the hospital setting.

Additional Limitations of Treatment I wish to include: _____

Part Four: Organ/Tissue Donation & Burial/Disposition of Remains

My wishes for organ & tissue donation (check your choice(s)):

- ☐ I consent to donate the following organs & tissues:
 - ☐ Any needed organs

☐ Any needed tissue (skin, bone, cornea)

☐ I do not wish to donate the following organs and tissues: _____

☐ I do not want to donate any organs or tissues

☐ I want my health care agent to decide

☐ I wish to donate my body to research or educational program(s). *(Note: you will have to make your own arrangements with a medical school or other program in advance.)*

My Directions for Burial/Disposition of My Remains after I Die (please check & complete):

☐ I have a Pre-Need Contract for Funeral Arrangements:

Name _____ Phone _____

Address _____

I want the following individuals to decide about my burial or disposition of my remains (check choices):

☐ Agent

☐ Alternate Agent

☐ Family:

Name _____ Phone _____

Address _____

☐ Other:

Name _____ Phone _____

Address _____

Specific Wishes: Check your choice(s).

☐ I want a Wake/Viewing

☐ I prefer a Burial — If possible at the following location: (cemetery, address, phone number) _____

☐ I prefer Cremation — With my ashes kept or scattered as follows:

☐ I want a Funeral Ceremony with a burial or cremation to follow

☐ I prefer only a Graveside Ceremony

- ☐ I prefer only a Memorial Ceremony with burial or cremation preceding
- ☐ Other Details: (such as music, readings, Officiant): _____

Part Five: Signed Declaration of Wishes

You must sign this before TWO adult witnesses. The following people may **not** sign as witnesses: your agent(s), spouse, reciprocal beneficiary, parents, siblings, children or grandchildren.

I declare that this document reflects my health care wishes and that I am signing this Advance Directive of my own free will.

Signed _____ Date _____

I affirm that the signer appeared to understand the nature of this advance directive and to be free from duress or undue influence at the time this was signed. *(Please sign and print)*

First Witness (print name) _____

Signature _____ Date _____

Address _____

Second Witness (print name) _____

Signature _____ Date _____

Address _____

If the person signing this document is a current patient or resident in a hospital, nursing home or residential care home, an additional person (designated hospital explainer, long-term care ombudsman, member of the clergy, Vermont attorney, or person designated by the probate court) needs to confirm below that he or she has explained the nature and effect of the Advance Directive and that the patient or resident appears to understand this.

Name _____ Date _____

Title / Position _____ Phone _____

Address _____

The following have a copy of my Advance Directive (please check):

☐ Vermont Advance Directive Registry Date registered: _____

☐ Health care agent

☐ Alternate health care agent

☐ Doctor/Provider(s): _____

☐ Hospital(s): _____

☐ Family Member(s): Please list:

Name _____

Address _____

Name _____

Address _____

Name _____

Address _____

Name _____

Address _____

Name _____

Address _____

☐ Other:

Name _____

Address _____

Name _____

Address _____

Name _____

Address _____

Name _____

Address _____

Appendix F

<http://vermontjudiciary.org/eforms/Pc%20072.pdf>

Probate Court Form No. 72

STATE OF VERMONT

DISTRICT OF _____, SS.

GUARDIANSHIP OF: _____

OF: _____

PROBATE COURT

DOCKET NO. _____

PETITION FOR APPOINTMENT OF GUARDIAN FOR AN ADULT PERSON

The undersigned (petitioner) represents that it is necessary that a guardian be appointed for the following individual (respondent):

Name

Residence Address

DOB

(Current location if different from above) _____

In support of this petition, the undersigned provides the following:

A. The name and address of anyone known to the petitioner who is:

Currently serving as a guardian (Attach a copy of appointment)

Currently named as Agent in an Advance Directive document (Attach a copy)

Currently acting as Agent under a Power of Attorney document (Attach a copy)

B. The petitioner's relationship to the respondent is (check one):

☐ friend/neighbor ☐ public official ☐ relative _____

☐ social worker ☐ physician ☐ other (attach explanation) _____

C. The respondent is alleged to be a person in need of guardianship, is at least 18 years of age or will be within four months of the filing of the petition, and is disabled from (check one):

☐ Mental Illness ☐ Developmental Disability ☐ Traumatic Brain Injury

☐ Other _____

D. List specific reasons with supporting facts as to why guardianship is sought:

E. The petitioner requests the following powers (check all that apply):

☐ To exercise general supervision over the person under guardianship, including care, habilitation, education, and employment.

☐ To give or withhold consent to medical or dental treatment, subject to the provisions of T.14 VSA §3075, and any constitutional rights of the person under guardianship to refuse treatment;

☐ To exercise financial supervision over the income and resources of the person under guardianship;

☐ To approve or withhold approval of any contract, except for necessities, which the person under guardianship wishes to make;

- ☐ To approve or withhold approval of the sale or encumbrance of real property of the person under guardianship subject to the provisions of T. 14 VSA §2881, et seq.;
- ☐ To obtain legal advice and to commence or defend against court actions in the name of the person under guardianship.

F. Have other alternatives to guardianship been considered? If yes, please explain:

G. Name and address of proposed guardian:

Telephone: _____

The undersigned understands that the Court must order an evaluation of the respondent to be performed by someone who has specific training and demonstrated competence to evaluate a person in need of guardianship. The evaluation shall be completed within 30 days of the filing of the petition with the court unless the time period is extended by the court for cause.

Name and address of evaluator:

The undersigned understands that the Court must appoint an attorney to represent the respondent in this proceeding.

Name and address of the respondent's attorney, if any:

Dated _____ Signed _____
Petitioner
Print name _____
Address _____

Telephone _____

I CONSENT TO BE APPOINTED GUARDIAN OF THE ABOVE RESPONDENT

Signature of proposed Guardian: _____

Date: _____

Attachments as follows:

1. \$☐☐☐.00 entry fee, payable to _____ Probate Court
2. Statement of proposed respondent's assets and income (Form No. 73)
3. List of interested persons (Form No. 75)
4. Copy of advance directive and/or any power of attorney
5. You also may be required to submit consents necessary for a complete background check.

Guardianship shall be utilized only as necessary to promote the well-being of the individual and to protect the individual from violations of his or her human and civil rights. It shall be designed to encourage the development and maintenance of maximum self-reliance and independence in the individual and only the least restrictive form of guardianship shall be ordered to the extent

required by the individual's actual mental and adaptive limitations. The state of Vermont recognizes the fundamental right of an adult with capacity to determine the extent of health care the individual will receive. 14 VSA § 3060

Appendix G

<http://vermontjudiciary.org/eforms/Pc%20073.pdf>

Probate Court Form No. 73
Statement of Proposed Ward's
Assets and Income

STATE OF VERMONT
DISTRICT OF _____

PROBATE COURT

IN RE: _____

DOCKET NO. _____

STATEMENT OF PROPOSED WARD'S ASSETS AND INCOME

ASSETS - Description and approximate value:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

INCOME - Description and approximate amount (include public benefits and pensions:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Signed _____
Print Name _____
Dated _____
Address _____
Telephone () _____

<http://vermontjudiciary.org/eforms/Pc%20075.pdf>

STATE OF VERMONT
DISTRICT OF _____

IN RE: _____ DOCKET NO. _____

List here all persons interested in the guardianship proceeding. For a minor, the list must include the proposed ward, the parent(s) of the proposed ward, the proposed guardian, and any person who has had principal care and custody of the proposed ward during the last 30 days. For an adult, the list must include the proposed ward, the proposed guardian, the spouse of the proposed ward or if none, the parents of the proposed ward, the adult children of the proposed ward if the spouse is proposed guardian, the nearest adult relative of the proposed ward if the proposed ward has not living parent, spouse or adult child, and anyone else directed by the court. List the attorney for the proposed ward, if known. Each listing must include the name, mailing address, including zip code, and the relationship of the person to the proposed ward. Use additional forms if necessary.

[illegible]

Appendix I

<http://vermontjudiciary.org/eforms/Pc%20074.pdf>

Probate Court Form No. 74
Petition to Appoint A Voluntary
Guardian for an Adult Person

STATE OF VERMONT
DISTRICT OF _____, SS.
IN RE THE GUARDIANSHIP OF

PROBATE COURT
DOCKET NO. _____

OF _____

PETITION TO APPOINT VOLUNTARY GUARDIAN FOR AN ADULT PERSON

The undersigned petitioner requests that the court appoint a guardian pursuant to 14 V.S.A. § 2671 to assist in the management of my affairs. I state that I am more than 18 years of age (my date of birth is _____) and I am not mentally ill or mentally retarded.

The approximate value of my real estate is \$ _____.
The approximate value of my personal property is \$ _____.
My annual income is \$ _____. (Financial information may be omitted in applications for limited guardianships for medical purposes only.)

I have attached the entry fee.
I request that the court appoint as my guardian:

Name	Residence	Relationship
------	-----------	--------------

_____	_____	_____
-------	-------	-------

I request that the guardian have the following powers. (Check applicable requests)

- ☐ 1. To exercise general supervision over me;
- ☐ 2. To approve or withhold approval of any contract, except for necessities, which I wish to make;
- ☐ 3. To approve or withhold approval of my requests to sell or in any way encumber my personal or real property;
- ☐ 4. To exercise general supervision over my income and resources;
- ☐ 5. To consent to surgery or other medical procedures, subject to the provisions of 14

V.S.A. Section 3075 and any constitutional right of mine to refuse treatment;

[] 6. To receive, sue for, and recover debts and demands due me, to maintain and defend

actions or suits for the recovery or protection of my property or person, settle

accounts, demands, claims, and actions at law or in equity against me, including

actions for injuries to my property or person, and to compromise, release, and

discharge the same on those terms as the guardian deems just and beneficial to

me.

Check one of the following:

[] I will physically appear before the court, or

[] I will not be able to physically appear before the court, but the petition is accompanied

by a letter from a physician or qualified mental health professional stating that I

understand the nature, extent and consequences of the guardianship requested and

the procedure for revoking the guardianship.

Dated _____

Signed _____,
Petitioner

Print Name _____

Address _____

Telephone () _____

I consent to be appointed guardian of the above petitioner.

Dated _____ Signed _____

Proposed Guardian

Print Name _____

Address _____

Telephone () _____

Appendix J

<http://ddas.vermont.gov/ddas-forms/forms-guardianship/forms-guardianship-documents/forms-opg-petition-services-adult-dd>

STATE OF VERMONT
____ COUNTY, SS.
IN RE GUARDIANSHIP OF

VERMONT FAMILY COURT
DOCKET NO. _____

Respondent

PETITION FOR GUARDIANSHIP SERVICES FOR AN ADULT WITH DEVELOPMENTAL DISABILITIES

This is a petition requesting appointment of a public guardian for an adult with developmental disabilities pursuant to 18 V.S.A. §9301 et seq.

Note: Part One is completed by the Interested Person requesting the petition. Part Two is completed by the State's Attorney.

PART ONE:

1. Name of respondent (*adult with developmental disabilities for whom a guardian is requested*):

Address: _____

Phone Number: _____ Date of Birth: _____

2. Name of interested person: _____

Address: _____

Phone Number: _____

3. Relationship to respondent: _____

4. Does respondent currently have a guardian? ☐ Yes ☐ No

Name of guardian: _____

5. Is a petition for guardianship pending in any other court? ☐ Yes ☐ No

Name of court: _____

6. Has respondent executed a power of attorney? ☐ Yes ☐ No

Name of person holding power of attorney: _____

7. Does respondent have an attorney? ☐ Yes ☐ No

Name of attorney: _____

8. Name of nearest living relative of respondent? _____

9. Does respondent have a developmental disability (mental retardation, autism or pervasive developmental disorder)? ☐ Yes ☐ No

10. Reason why respondent needs a guardian for his/her own welfare: _____

11. Is any relative or friend available to serve as guardian for respondent? ☐ Yes ☐ No

If yes, explain: _____

12. Guardianship powers requested: (Check all that apply)

- ☐ General Supervision (This includes choosing or changing residence, care habilitation, education or employment, and approving sale or encumbering of real property.)
- ☐ Contracts (To approve or withhold approval of contracts)
- ☐ Legal (To obtain legal advice and commence or defend against judicial actions)
- ☐ Medical and Dental (To seek, obtain and give consent to medical and dental treatment)

I, the undersigned, request the State's Attorney for _____ to file a petition for guardianship of respondent.

Interested Person

Date

PART TWO:

(To be completed by the State's Attorney)

It appears that respondent is a person with developmental disabilities who is

- (1) at least 18 years of age
- (2) in need of supervision and protection for his/her own welfare or public welfare

WHEREFORE, petitioner requests the Court to appoint the Commissioner of Developmental and Mental Health Services guardian for respondent.

State's Attorney for _____ County

Date

List here the name, address and phone number, if you know them, of the following people who may be interested in the guardianship proceeding.

NAME	ADDRESS	PHONE	RELATIONSHIP
------	---------	-------	--------------

Current Guardian _____

Attorney _____

Person holding power of attorney _____

Near relatives (include: spouse, parent, step-parent, brother, sister and grandparent)

Appendix K

<http://www.vermontjudiciary.org/eforms/Pc%20079.pdf>

Probate Court Form No. 79

Guardian's Bond

STATE OF VERMONT

DISTRICT OF _____, SS.

IN RE THE GUARDIANSHIP OF

PROBATE COURT

DOCKET NO. _____

OF _____

GUARDIAN'S BOND

We, _____ of _____, as principal,

and _____ of _____, as sureties,

are held and stand bound to the Probate Court for the District of _____ in the penal sum of \$ _____ to secure the performance of duties as specified in the conditions below.

The condition of this obligation is that _____ who is guardian of the ward shall:

☐ file with the court within 30 days of issuance of letters of guardianship a true inventory of all the real and personal property of the ward.

☐ manage and dispose of the estate and effects according to law and for the best interest of the ward and faithfully discharge the obligation in relation thereto.

☐ render an account of the property of the ward within one year after the appointment of the guardian, annually thereafter and at any time as the court may require.

☐ upon termination of this fiduciary obligation, render and settle a final account and pay over and deliver the estate and remaining effects to persons legally entitled to them.

When the conditions of this obligation are fulfilled, this bond shall not longer be in force.

Dated _____

IN THE PRESENCE OF:

_____ (L.S.)

(L.S.)

(L.S.)

(L.S.)

R 5/86

Appendix L

EXERCISE OF CONSENT

INSTRUCTIONS FOR USE:

Complete when consent is required or requested on behalf of the consumer in order to:

- encumber property of significant value
- enter into a contract of significant value
- commence or defend judicial action
- initiate surgery

- 1) Consumer Name: _____
- 2) Date: _____
- 3) Name of Public Guardian: _____
- 4) Identify the consumer service need for which consent is requested:

- 5) Describe the circumstances leading to the proposed action, indicating the parties involved, and significant dates:

- 6) Consumer needs in this area have been previously documented and are reflected in:
 - ☐ Minimum Data Base
 - ☐ Near-Term Object
 - ☐ Problems/Needs List
 - ☐ Individualized Support Agreement
 - ☐ Medical Records (dental visits) _____
- 7) Describe the consequences presented by a denial or approval of the proposed action and the impact on consumer status of each:

<u>Approval:</u>	<u>Denial:</u>
_____	_____
_____	_____

Identify the Public Guardian's recommendation for the most acceptable action to be taken, based on the criteria identified in the procedures manual:

- 8) Where consent impacts on service provision of a service provider currently providing or projected to provide services or programming to the consumer, consultation has been secured from that provider:

☐ Yes

☐ No

- 9) Describe the costs involved to the consumer or system of the proposed action:

- 10) Consumer has been informed of proposed action and assistance provided him/her in evaluation options: ☐ Yes ☐ No

- 11) Consumer acknowledgement of action to be taken has been secured:

☐ Yes

☐ No

- 12) Attach any supporting documentation or diagnoses which have led to the Public Guardian's recommendation.

- 13) Consent approved ☐ or denied ☐ for action of the following description:

Public Guardian's Signature

Date

Program Supervisor's Signature

Date

Appendix M

<http://www.ddas.vermont.gov/ddas-policies/policies-dds/policies-dds-documents/medicaid-and-out-of-state-treatment>

Maintaining Vermont Medicaid Eligibility When Living Out-of-State for the Purpose of Receiving Treatment Funded with Developmental Disabilities Home and Community-Based Services Funding Updated: May 2011

Purpose

This document provides information to assist individuals who receive Vermont developmental disabilities home and community-based services funding (formerly called “Medicaid DS Waiver”) and who live out-of-state for the purposes of receiving treatment (i.e., shared living/developmental home) to not lose their Vermont Medicaid or SSI.

Specifically, it outlines the process for informing the Social Security Administration (SSA) and the Benefit Program Specialists at the Department for Children and Families (DCF) when someone is in one of these living arrangements.

The document also provides information on how living out-of-state affects a person’s benefits and what to report to DCF when a person moves out-of-state for treatment or permanently.

Premise

1. A person must have Vermont Medicaid in order to receive developmental disabilities home and community-based services funding from Vermont for home and community-based waiver services¹.
2. A person cannot receive Medicaid from more than one state at a time.
3. In order for SSA to consider a person living out of state for the purposes of receiving treatment, the person needs to be in Living Arrangement H: Custodial Care (also known as “shared living” or “developmental home”).

When a person receiving developmental disabilities home and community-based services funding is placed in an out-of-state living arrangement for “treatment purposes”, that person may retain his/her Vermont residency status and may therefore continue to be a Vermont Medicaid recipient and receive the full SSI amount, including the Vermont portion.

Examples of out-of-state living arrangements:

- Living with a home provider over the NH, MA or NY border
- On a trial visit or temporary visit in another state.

¹ A person may apply and be eligible for Medicaid because of being found eligible for home and community-based services funding, but the person must still meet the financial eligibility criteria for Medicaid.

People receiving specialized treatment in an out-of-state Medicaid facility (such as for Prader Willi Syndrome) may also qualify but that is a separate process.

What to Report

If a person is being placed out-of-state for treatment purposes, the following people **must** be notified. **It is critical these three notifications are made to avoid the person losing Vermont Medicaid.**

- District Social Security Administration (Burlington, Montpelier or Rutland) – ask for the person’s caseworker (SSA residency code must always be “Vermont”).
- Contact the Department for Children and Families, Economic Services Division, Benefit Services Center at 1-800-479-6151. The Benefit’s Service Representative will either make the necessary changes or transfer you to the district Benefits Program Specialist.
- Division of Disability and Aging Services – ask for Developmental Disability and Children’s Services Unit Program Tech (802-241-2614). The Program Tech also notifies DCF Central Office.

The information that needs to be reported when a person moves out-of-state for treatment purposes includes:

- Person’s first and last name
- Social Security number
- Date of birth
- Date of move to out-of-state placement
- Representative payee address – the person responsible for getting the mail from Economic Services Division
- Residence Address – to be used as the Vermont address where the person is maintaining residency – same as representative payee address unless representative payee lives outside of Vermont – then use the developmental disabilities service providers address (for SSA only)
- Physical address – address of out-of-state placement
- Last permanent address – town where person lived prior to move

It is always best to make these notifications prior to the person moving. If mail is returned to DCF with an out-of-state address, DCF will close Vermont Medicaid as soon as possible unless DCF knows it is an out-of-state placement for treatment purposes.

It is also necessary to contact SSA, DCF and DDS when the person returns to Vermont or moves permanently out-of-state. Please include the following information:

- Person’s first and last name
- Social Security number
- Date of birth
- Date of move back to Vermont (or when person became resident of other state)

- Physical address in Vermont where person is living (or state where person became a resident)

Reporting to DCF – Economic Services Division

Move Out-of-state for Treatment Purposes

As noted above, when someone is being placed out-of-state for treatment purposes, DCF needs to know if the address they have on record should change or not. Ultimately the address should be where review applications and other DCF notices should be sent. If the person's authorized representative is someone other than the person's representative payee, then the payee needs to forward all notices and applications to the authorized representative.

During the time the person is living out-of-state for treatment purposes, it is important to notify DCF of the move and that it is for treatment purposes only. If an annual DCF eligibility form is being filled out, the person's Vermont mailing address (that of the representative payee or provider agency) should be provided as the person Vermont residence. Enclose a note explaining the person is living out-of-state for treatment purposes but Vermont residency is being maintained. The representative payee would then be ultimately responsible for all mail sent from DCF.

Here is a sample note to send to the local DCF office:

“[Person's name with SSN and DOB] was living in [name of town of last permanent address] but is now currently receiving treatment at [out-of-state address] as of [move date] but remains a Vermont resident of [address of payee]”.

Temporary Move Out-of-state for Trial Visit or Vacation

It is not necessary to report someone who is going out-of-state for a short trip or visit. However, if a person is going out-of-state for an extended stay (e.g., spending the winter in Florida), the local DCF office should be notified.

Here is a sample note to send to the local DCF office:

“[Person's name with SSN and DOB] will be out of Vermont from [date leaving] to [date returning]. [Person's name] is not moving, but is visiting [name of state]”

If the person is on a temporary absence for a full calendar month, SSA also needs to be contacted with the information listed on page two of this notice.

Permanent Move within Vermont

If a person is moving permanently within the state of Vermont, contact the Department for Children and Families, Economic Services Division, Benefits Service Center at 1-800-479-6151 to report the change in address. Please also contact the Social Security Administration at 1-800-479-6151 to report the change of address.

Permanent Move Out-of-state

As noted above, if a person is permanently moving out-of-state and ending his/her Vermont residency, contact the Department for Children and Families, Economic Services Division, Benefits Service Center at 1-800-479-6151 to report the change in address.

A person would not maintain his/her Vermont residency when he/she moves permanently and becomes a resident of another state and no longer receives funding or services from a Vermont service provider. A person would need to apply for Medicaid in the new state and discontinue Vermont Medicaid.

How Living Out-of-state Affects Benefits

Whenever someone on Medicaid leaves the state of Vermont for any reason, it is important to be aware of the limitations of Vermont Medicaid insurance. For example, many doctors, hospitals, pharmacies and other medical providers outside of Vermont are not enrolled as Vermont Medicaid providers and therefore cannot accept Vermont Medicaid as payment unless they are willing to enroll as a Medicaid provider. There are some things that can be done to increase the likelihood of insurance coverage.

1. Check with medical providers in the state where the person will be receiving treatment or visiting to see if they are Vermont Medicaid providers. Many providers in towns bordering Vermont accept Vermont Medicaid, but some do not.
2. If a medical provider is not enrolled as a Vermont Medicaid provider, ask if they are willing to enroll. To enroll, the provider needs to call HP Enterprise Services (802-878-7871).
3. Plan in advance to have sufficient medication on hand when going out-of-state.
4. Some people receiving treatment or visiting out-of-state still see a regular doctor and other healthcare providers in Vermont. However, they still may need medical treatment while out-of-state. If the person needs emergency or unexpected medical care from a non-Vermont Medicaid provider, the medical provider can enroll as a Vermont Medicaid provider after the fact and bill Vermont Medicaid for the treatment that already took place.

If you have questions regarding this notice, please contact:

June Bascom

Division of Developmental Services, DAIL

103 South Main Street, Weeks Building

Waterbury, VT 05671-1601

Phone: 802-241-2644

Fax: 802-241-4224

june.bascom@state.vt.us

Appendix N

<http://www.ddas.vermont.gov/ddas-policies/policies-dds/policies-dds-documents/behavior-support-guidelines>

BEHAVIOR SUPPORT GUIDELINES For Support Workers Paid With Developmental Services Funds

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 helping the person live the life he or she desires. The Behavior Support Guidelines are based on positive support strategies, and represent a commitment to work continuously to end coercion. 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.

The full Guidelines are available by using the link above and should be referenced in all appropriate situations.

"I think that any approach that enhances a person's sense of values and dignity is worth a lifetime of trying. Behavior change should be seen as growth rather than a series of defeats and surrenders."

- Herb Lovett