

3005.0.0 ADULT GUARDIANSHIP

3005.1.0 Purpose

To ensure appropriate Department of Human Services (DHS) response to the service needs of incapacitated persons or suspected incapacitated persons under the Limited Guardianship Law (Act 345 of 1983).

3005.2.0 Scope

This policy is applicable to all DHS divisions/offices. Each Division Director will designate appropriate and sufficient personnel to carry out the process outlined in this policy.

3005.3.0 General

DHS supports the concepts of limited guardianship as outlined in Act 345 of 1983 and will carry out those activities necessary to assure full compliance with the law.

3005.4.0 Duties and Responsibilities of DHS

3005.4.1 Under Section 7 of Act 345 of 1983, at the request of the Court, DHS will assist the Court by gathering records, investigating the respondent's condition, and helping to arrange for appropriate professional evaluation.

3005.4.2 Under Section II of Act 345 of 1983, if no other suitable person exists, the court may appoint an employee of a public agency as the limited or temporary guardian of an incapacitated person as long as that employee is not already providing direct services to the incapacitated person.

3005.4.3 The Division of Behavioral Health, Division of Developmental Disabilities Services, Division of Services for the Blind, and Division of Aging and Adult Services will each designate a staff person as its contact for inquiries concerning guardianship matters. The designees shall have a working knowledge of the services and policies of their respective agencies as well as of Act 345 of 1983.

3005.5.0 Response to Inquiries from the Court

3005.5.1 Division of Aging and Adult Services, Adult Protective Services Section, is the DHS designated point of contact to receive and respond to all inquiries concerning guardianship from the court.

3005.5.2 When the Adult Protective Services Section receives a request for assistance from the Court, its staff will investigate the need for guardianship. At the request of the Adult Protective Services Section, the guardianship designees of the other DHS divisions/offices will assist with investigations. Such assistance may include interviewing the respondent, petitioner, and others who have knowledge of the

respondent's condition; collecting previous records; arranging for or performing evaluations; preparing reports for the Court and testifying in Court. When two or more divisions/offices are involved in the investigation, Adult Protective Services staff will act as coordinator of all investigative activities.

3005.5.3 The Adult Protective Services Section will be responsible for notifying the Court of the results of its investigation and arranging for a DHS professional to testify in Court when necessary.

3005.6.0 Response to Inquiries from DHS Divisions/Offices

DHS divisions/offices which have questions or concerns about guardianship matters may contact the Adult Protective Services Section for technical assistance. Types of assistance provided may include: investigation of the need for guardianship, information on Court processes, assistance in understanding Act 345 of 1983, advice on less restrictive alternatives to guardianship, and assistance in locating friends/relatives to serve as guardian for an incapacitated person.

3005.7.0 DHS Serving as Limited or Temporary Guardian

The Department may recommend appointment of the Director as a limited or temporary guardian of an incapacitated person only when guardianship is necessary to protect the health, welfare, or safety of that individual DHS client, after fulfillment of all the requirements in Act 345 of 1983 and of this policy.

3005.8.0 Referral of Guardianship Cases to DHS

3005.8.1 Before the division/office may request that the Director of DHS assume limited or temporary guardianship of an incapacitated person, they must document that every available alternative has been exhausted. This includes showing any less restrictive interventions such as representative payee, power of attorney, etc. have failed or are not adequate and that all recent attempts to locate family/friends to serve as guardian were unsuccessful.

3005.8.2 After exhausting every available alternative, a division/office may request that the Director of DHS assume limited or temporary guardianship of an incapacitated person. This request must be made in writing to the DHS designee for guardianship, the Adult Protective Services Section of the Division of Aging and Adult Services.

The request must contain an evaluation of the need for guardianship as specified under Section 7 of Act 345 of 1983 and must define that need as narrowly as possible. Under Section 7 of Act 345 of 1983, the evaluation must include: "respondent's medical and physical condition, adaptive behavior, intellectual functioning, support systems available, recommendation on specific areas for which assistance is needed and the least restrictive alternatives available." The referring division/office must provide the Adult Protective Services Section with all its documentation on alternatives to guardianship and its search for a suitable guardian.

- 3005.8.3 The Adult Protective Services Section will conduct its own investigation of the need for guardianship. If that section determines that limited or temporary guardianship is indicated, it will assist the attorney for the petitioner in preparing the case for Court. The Adult Protective Services Section may call upon the referring division/office for any assistance in the preparation of the case. If the referring division/office has an attorney on its staff, that attorney will be responsible for representing the petitioner agency in Court. The Adult Protective Services Section will make reasonable efforts to secure outside counsel to assure that the client is represented by an attorney as guaranteed by Section 9, Act 345 of 1983.
- 3005.8.4 The guardianship order will name as limited or temporary guardian, the Director of DHS, in his official capacity and his successor(s) as standby guardian(s) and will specifically state his duties in this capacity. The staff of the Adult Protective Services Section will serve as the Director's designee in carrying out the duties of the guardianship order. The DHS Director or his designee will make decisions for the client only concerning those matters where that authority has been specifically granted to him in the guardianship order. Any additional matter requiring the DHS Director's or his designee's consent or involvement can only be accomplished by specific expansion of the guardian's authority by order of the Court.
- 3005.8.5 The Department recognizes that a guardian is only a facilitator of services not a provider of services. The Adult Protective Services Section may call upon any of the DHS divisions/offices to assist in providing services and support to the client.
- 3005.8.6 If the Adult Protective Services Section determines that guardianship is not indicated for a client, they must recommend to the referring DHS division/office other alternatives for meeting the client's needs. If the referring DHS division/office disagrees with the Adult Protective Services Section's decision, they may request that the Adult Case Review Committee review the case. If the referring DHS division/office is not satisfied with the recommendation of the Adult Case Review Committee they may refer the case to the DHS Director for final resolution.

3005.9.0 DHS Advice to Family/Friends of an Incapacitated Person

- 3005.9.1 If a DHS division/office advises a family member or friend of an alleged incapacitated person that guardianship is indicated, that DHS division/office must provide that person with the following:
- A. An evaluation of the need for guardianship in accordance with Section 7 of Act 345 of 1983 and Section VIII.B of this policy.
 - B. Designation of a professional as defined in Section 1 (h.) of Act 345 of 1983 to testify in Court. A professional is defined as "a physician, licensed psychologist, or licensed certified social worker with training, experience, and knowledge of the particular alleged disability of the respondent."

C. All information required on the petition under Section 5 of Act 345 of 1983.
This includes:

1. The name, age, and address of the petitioner and his relationship to the respondent
2. The name, age, and present address of the respondent
3. A statement of the respondent's alleged disability
4. A recommendation proposing the type, scope and duration of guardianship
5. Evidence of exploration of alternatives to guardianship
6. Statement that any facility or agency from which the respondent is receiving services has been notified of the proceedings
7. Names and addresses of others having knowledge about the person's disability
8. Names and addresses, so far as known, or can reasonably be ascertained, of those persons related by blood or marriage to the presumed incapacitated person.

DEPARTMENT CONTACT

Office of the Director
Department of Human Services
P.O. Box 1437 – Slot S201
Little Rock, AR 72203-1437
Telephone: (501) 682-8650