

# **YOUR RIGHTS IN THE GUARDIANSHIP PROCESS**

**INFORMATION PRESENTED BY THE MICHIGAN STATE  
LONG TERM CARE OMBUDSMAN PROGRAM**

## **Introduction**

### **Why am I receiving this pamphlet?**

You are being provided this information because someone has asked the probate court to appoint a guardian for you, or because you already have a guardian.

You have a number of rights to help ensure you only have a guardian if you need one.

### **What is a guardian?**

A guardian is a person or company appointed by a probate court to make decisions for you if there is convincing evidence you are unable to make informed decisions for yourself.

A guardian can only be appointed if necessary to provide for your care.

### **What decisions can a guardian make for me?**

A judge can give a guardian power to decide where you live, to make medical treatment decisions for you, to arrange services and to decide how your money is spent.

### **Do I lose rights if a guardian is appointed?**

Yes. For instance, if a guardian is given power to decide where you live, you lose the right to make that decision for yourself.

## **Do all guardians have the same powers?**

No. For example, a judge could grant a guardian power to make medical decisions for you, but not the power to decide where you live or to handle your money.

## **What are some responsibilities of a guardian if one is appointed for me?**

Your guardian is required to visit you at least every three months, and to talk with you before making major decisions.

Your guardian is required to make decisions in your best interests, and to arrange appropriate medical, housing and social services so you can regain as much self-care as is possible.

## **The Guardianship Petition**

### **How is a guardian appointed?**

The first step is that someone interested in your welfare files a petition in probate court.

At the same time you are receiving this pamphlet, you are being given a copy of the petition.

## **What is the purpose of the petition?**

The petition sets forth information why the petitioner believes you need a guardian.

## **What happens upon a petition for guardianship being filed with the court?**

Court staff set a date for a court hearing. The hearing may be very soon or a few weeks away.

The judge cannot appoint a guardian for you without a hearing.

## **The Guardian Ad Litem**

### **What else happens upon a petition being filed?**

Court staff will send a person to your home to talk with you before the hearing date. This person, known as a guardian ad litem, is the person who handed you this pamphlet.

The guardian ad litem has no power to make decisions for you, only to collect information.

### **What will the guardian ad litem talk to me about?**

The guardian ad litem will explain guardianship and your rights in the process.

If you do not object to guardianship, the guardian ad litem will provide information to the judge whether guardianship is appropriate and about who should serve as guardian.

## **Your Rights**

### **Can I choose the person to be my guardian?**

Yes, you have this right. Tell the guardian ad litem of your choice.

### **Do I have the right to attend the court hearing?**

Yes, you always have the right to be at the hearing.

Tell the guardian ad litem if you want to attend the court hearing. Tell the guardian ad litem if you need transportation to get to the hearing, and if you need any help such as a wheelchair, a special hearing device or an interpreter in the courtroom.

### **What if I have signed a durable power of attorney for health care in the past?**

Make sure you make the guardian ad litem aware of the document. Give him or a copy of the document if you have one.

## **If I do not want a guardian, what do I do?**

It is very important you tell the guardian ad litem if you do not want a guardian, or if you do not want a particular person to serve as guardian, or if you want the guardian's powers limited in any way.

## **What will the guardian ad litem do then?**

By law, the guardian ad litem must report your wishes to the court, and court staff must appoint a lawyer to represent you. This will not cost you any money.

## **Hiring a Lawyer**

### **Can I hire my own lawyer instead of having the court appoint a lawyer?**

Yes. You also always have the right to hire a lawyer.

### **What is the role of my lawyer?**

Whether the lawyer is court appointed or chosen by you, your lawyer must strongly argue for your wishes, regardless of what anyone else thinks is best for you.

## **Do I have the right to get a professional evaluation of my ability to make decisions?**

Yes. You can choose a doctor, psychologist, nurse or social worker to do the evaluation. If you cannot afford the cost of the evaluation, the court will pay for it.

## **The Court Hearing**

### **What is the purpose of the court hearing?**

The person who filed the petition must present evidence and prove that you cannot make informed decisions for yourself, and that guardianship is necessary to meet your needs.

### **What if I disagree with the evidence presented?**

You or your lawyer have a right to dispute any evidence presented, and you or your lawyer has a right to present witnesses and other evidence on your behalf.

If you have asked for a professional evaluation, you can decide whether to present the results to the judge.

### **Who decides whether I need a guardian?**

The judge will usually make the decision whether there is clear and convincing evidence you cannot make informed

decisions over one or more areas of your life. The judge will also determine whether guardianship is necessary to meet your needs.

If you have exercised your right to have a jury trial, the jury will decide those questions.

### **Who decides what powers the guardian will have?**

The judge or jury will also determine what powers the guardian will have, based on your needs.

### **What if the judge or jury decides I need a guardian, but I disagree?**

You have a right to appeal the decision to the Circuit Court.

### **How do I know what powers my guardian has?**

The court order signed by the judge, and the letters of guardianship given to the guardian, must show the powers the guardian has.

You can ask court staff or the guardian for a copy of the letters of guardianship



## **After a Guardian is Appointed**

### **If I have a guardian, do I lose all my rights?**

No. For example, generally you maintain the right to speak your mind, to practice your religion and to see family and friends of your choice.

### **If a guardian is given authority to make medical treatment decisions for me, are there limits in the types of decisions the guardian can make?**

Yes. For instance, a guardian does not have authority to hospitalize you for mental health treatment unless you assent.

A guardian can only authorize electroconvulsive therapy (ECT) if your guardian is given that authority and two psychiatrists agree it is appropriate.

### **Can a guardian have a do-not-resuscitate order put in my nursing home chart or hospital chart?**

The law does not adequately address the powers of a guardian concerning end-of-life care.

Judges disagree whether a guardian has the power to agree to a DNR order, or to withhold or withdraw treatment that is keeping you alive.

## **How can I know whether my guardian has such power?**

It is best to ask the judge to specify in the court order and letters of guardianship whether the guardian has this power, and in what circumstances.

## **If I object to a guardian's decisions, what can I do?**

You can write a letter to the probate judge, or you can file a petition with the court. There is no cost. You can ask the judge to -

- End the guardianship, or
- Limit the guardian's powers, or
- Name another person as guardian.

## **Can I hire a lawyer to represent me?**

Yes. You do not lose that right just because you have a guardian.

If you do not hire a lawyer, request the judge appoint one for you. The judge is required to do so.

## **Will there be another court hearing?**

Yes. You have all the same rights you had during the first hearing.

## **What if I have questions about guardianship?**

You can telephone the probate court.

Court staff can provide information such as rights you have under the law, the name of your guardian ad litem or lawyer, and the date of your court hearing.

## **What if court staff are unable to answer my questions?**

If staff are unable to answer a question, they may be able to refer you to a person or agency that can answer it.

## **What is the name and phone number of the probate court?**

