

**CHAPTER 411
DIVISION 26**

GUARDIANSHIPS AND CONSERVATORSHIPS

411-026-0000 Purpose and Scope of Program

(Amended 12/1/2006)

(1) The purpose of these rules is to provide a means by which guardianship can be established by the Seniors and People with Disabilities Division for any elderly individual or an individual with a disability for whom there has been a strong showing of incapacity and functional impairment; for whom there can be no less restrictive form of intervention; and for whom guardianship is necessary for the individual's well-being, safety and best interest. The program will be limited to persons who lack any other means for the appointment of a guardian.

(2) The Seniors and People with Disabilities Division has the responsibility to pay for guardianship within budgetary restrictions when this procedure is the most appropriate action to protect the elderly or individual with disability and no other source of payment is available. This action must benefit the individual and must meet the eligibility criteria listed in OAR 411-026-0020. Guardianship is a restrictive option and may be used only after exhausting all other appropriate options. Temporary and limited guardianships may be used when full guardianships are not necessary to meet the individual's needs.

(3) These rules also establish guidelines for the nomination and payment of legal costs for conservators.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

411-026-0010 Definitions

(Amended 12/1/2006)

For purposes of these rules, the following definitions apply:

(1) "AAA" means a Type B Area Agency on Aging that is an established public agency within a planning and service area designated under Section 305 of the Older Americans Act which has responsibility for local administration of Department Programs.

(2) "Conservator" means a person who has fiduciary responsibility and is appointed as conservator to administer the estate of a protected individual under ORS 127.005 and 127.015.

(3) "Court" means any court in Oregon having probate jurisdiction or a judge thereof.

(4) "Department" means the Department of Human Services, Seniors and People with Disabilities Division (SPD) or its designee.

(5) "Extreme High Risk" means an immediate and serious danger to life, health, or safety.

(6) "Fiduciary" means a guardian or conservator appointed under the provisions of ORS 125.

(7) "Financially Incapable" means a condition in which an individual is unable to manage financial resources of the individual effectively for reasons including but not limited to, mental illness, mental deficiency, physical illness or disability, chronic use of drugs or controlled substances, chronic intoxication, confinement, detention by foreign power or disappearance.

(8) "Functional Incapacity" means an individual's inability to meet his or her needs of daily living without which perilous physical injury or illness is likely to occur.

(9) "Guardianship" means a court procedure in which a person is appointed to make personal, health or other care decisions for a functionally incapacitated individual. Guardianships can be:

(a) Temporary -- limited to cases of emergency and lasting not more than 30 days;

(b) Limited -- power(s) stated is not every power possible under the statutes; or

(c) Full -- court finds the incapacitated individual has no capacity to decide anything without a guardian giving consent.

(10) "Incapacitated Individual" means an adult whose ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that he or she presently lacks the capacity to provide the health care, food, shelter, clothing, personal hygiene and other care without which serious physical injury or illness is likely to occur.

(11) "Interested Person" includes a person who would inherit by law or by will, children, spouses, creditors, beneficiaries and any others having a property right in or claim against the estate of a ward or incapacitated individual that may be affected by the proceeding; persons having priority for appointment as personal representative; and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and may be determined according to the particular purposes of, and matter involved in, any proceeding.

(12) "Manage Financial Resources" means those actions necessary to obtain, administer and dispose of real and personal property, intangible property, business property, benefits and income.

(13) "Visitor" means a person who is an officer, employee or special appointee of the court, is not an interested person in the proceedings and has been trained or has the expertise to appropriately evaluate the needs of the allegedly incapacitated individual.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

411-026-0020 Eligibility

(Amended 12/1/2006)

SPD guardianship payment may be considered for individuals who meet all of the following criteria:

- (1) Is age 65 years or older or physically disabled (age 18 or older);
- (2) Is functionally incapacitated;
- (3) Is at extreme high risk;
- (4) Has no other person or agency available or appropriate to act;
- (5) Is unable to understand the ramifications of his or /her choices and unable to make informed decisions; and
- (6) Benefits directly from a guardianship.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

411-026-0030 SPD/AAA Assessment

(Amended 12/1/2006)

(1) For guardianship payments to be considered, the SPD/AAA office must complete an assessment of the individual proposed for guardianship. The assessment must provide concrete evidence of functional incapacities. The assessment must address whether the individual's ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that he or she presently lacks the essential requirements for his or her health or safety or to manage his or her financial resources. The assessment must include a recommendation regarding the need for the guardian or other person to exercise any control over the estate.

(2) SPD/AAA field staff may recommend a person to act as guardian. This may be a family member, friend, public or community guardianship program, or a private casemanager. Pro bono services must be rigorously pursued.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

411-026-0040 Recommendation for Guardianship

(Amended 12/1/2006)

(1) On the basis of the assessment data and information from other appropriate sources (e.g. mental health professional, physician, etc.), the referring SPD/AAA field staff may request payment from SPD Central Office for the legal work, court fees and the most appropriate form of guardianship (temporary, limited or full). The request must utilize forms and procedures established by the Department.

(2) SPD may authorize payment for fees to set up a temporary guardianship when there is clear and convincing evidence that:

(a) An extreme high risk exists and no guardian has been appointed;
or

(b) A guardian is already in place and is not effectively performing duties; or

(c) The welfare of the incapacitated individual requires immediate action that can be solved within 30 days.

(3) SPD may authorize payment for fees to set up a limited guardianship when the incapacitated individual needs some but not all decisions to be made by someone else.

(4) SPD may authorize payment for fees to set up a full guardianship when it is demonstrated that ongoing guardianship is needed for the continuing care, comfort and maintenance of the incapacitated individual. An exception for ongoing guardianship fees may be sought in cases where no cost-free resources can be developed and there is a continuing serious danger to the life and health of the incapacitated individual.

(5) SPD must not authorize payment for guardianship proceedings solely for the provision of medical care or hospitalization.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

411-026-0050 Assignment of Attorney

(Amended 12/1/2006)

The Department must establish a list of successful respondents to a Request for Qualifications to be used by the Department to pursue guardianships, conservatorships and probate matters. The names will be placed on a geographical list and must be assigned or nominated on a rotating basis. The Department retains the right to use other attorneys in emergency situations when listed attorneys are not immediately available.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

411-026-0060 Request and Authorization for Payment

(Amended 12/1/2006)

(1) SPD/AAA field offices must submit to the Department a request for payment of attorney fees for the preparation of a petition to the court for a guardianship or conservatorship when no assets are available and for court or Visitor's fees that are not waived. Within budgetary constraints, SPD may authorize payment when it is documented that all eligibility criteria are met.

(2) When payment for a requested guardianship is approved or when payment for conservatorship is approved because there are no assets, the Department must send a purchase order authorization to the assigned attorney, with a copy to the local office. The Department or its designee will then send the attorney the information needed to petition the court for the proposed guardianship or conservatorship.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

411-026-0070 Disclosure of Information

(Amended 12/1/2006)

(1) SPD/AAA field staff may provide the information about the incapacitated individual proposed for guardianship to the attorney filing the petition to establish the need for the guardianship. When the Visitor's appointment

orders are presented, the file contents relevant to the guardianship proceeding may be discussed and/or shown to the Visitor.

(2) SPD/AAA staff must provide testimony in guardianship proceedings when ordered by the court to do so pursuant to ORS 411.320 and 418.130.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

411-026-0080 SPD Coordination of Conservatorships

(Amended 12/1/2006)

(1) An individual served by SPD who is financially incapable and whose assets need protection or for whom disposition of excess property is needed to maintain eligibility for SPD services or benefits, may be referred to the Department for nomination of a conservator.

(2) SPD/AAA field staff must assess the individual and must obtain any evidence available establishing the individual is financially incapable. SPD/AAA field staff will verify that no family member, close friend, or other person is appropriate and available to petition for and serve as conservator.

(3) The Department will nominate or assign an attorney as described in OAR 411-026-0050.

(4) The conservator will be paid through the assets of the individual's estate as ordered by the court and in accordance with the contract provisions. When there are no assets, the Department may pay the costs to establish the protective proceedings.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070