



# **ECHO IDAHO:** **Behavioral Health in Primary Care**

## **Guardianships & Mental Health**

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None of the planners or presenters for this educational activity have relevant financial relationship(s) to disclose with ineligible companies whose primary business is producing, marketing, selling, re-selling, or distributing healthcare products used by or on patients.

# Learning Objectives

- Attendees will understand the goals of guardianship.
- Attendees will understand the legal criteria for guardianship.
- Attendees will understand the role of the medical provider in a guardianship case.
- Attendees will learn about the roles and responsibilities of the county Boards of Guardianship.

# Legal Criteria & Definitions

- Incapacitated Person – any person who is impaired to the extent they lack sufficient understanding or capacity to make or communicate responsible decisions concerning their person; does not include people who are developmentally disabled.
- Incapacity –
  - refers to when a person has suffered, is suffering, or is likely to suffer substantial harm due to an inability to provide for their personal needs for food, clothing, shelter, health care, or safety, or an inability to manage their own property or financial affairs;
  - measured by functional limitations and risk that has occurred within the past 12 months.
- Ward – a person for whom a guardian has been appointed.

Source: Idaho Code 15-5-101

# Goals of Guardianship

- Assist the incapacitated person (i.e. ward) in meeting their basic needs, protecting their rights, managing their financial resources, developing or regaining their abilities to the maximum extent possible.
- Provide the least restrictive form of guardianship possible, based on the ward's needs and level of incapacity, that allows the ward to participate as fully as possible in all decisions affecting them.

Source: Idaho Supreme Court Bench Card for Guardianship for Incapacitated Adults; Idaho Code 15-5-303

# General Powers & Duties of a Guardian

- Make provisions for the care, comfort, & maintenance of the ward and, when appropriate. Includes care of the ward's clothing, furniture, & other personal effects.
- Establish the ward's residence & make efforts to ensure a convicted felon does not reside with, care for, or visit the ward without court approval.
- Give any consents or approvals needed to enable the ward to receive medical or other professional care, counsel, treatment, or services. The guardian is entitled to information protected by HIPAA.
- Guardianships may be general or limited.

Source: Idaho Code 15-5-312 & Idaho Code 15-5-303

# Overview of the Process

- Petitioner (person seeking guardianship) files a petition for guardianship in the county where the incapacitated adult resides.
- The court appoints a guardian ad litem, court visitor, a physician and/or mental health professional to examine the alleged incapacitated person.
- Temporary guardianship can be ordered especially when there is evidence of an emergency situation. It cannot exceed 90 days without good cause.
- Petitioner must complete an online class and background check.
- Most petitioners will need to hire an attorney.
- Judge reviews all evidence presented during a hearing.
- Costs to the petitioner will include legal fees, court visitor fees, guardian ad litem fees, and a background check.

# Most Common Conditions

- Major Neurocognitive Disorders
  - Dementia
  - Alzheimer's Disease
  - Traumatic Brain Injury
  - Huntington's Disease
- Korsakoff Syndrome
- SPMI typically involving psychosis – schizophrenia, schizoaffective disorder, bipolar with psychotic features, major depression with psychotic features
- No separate code or criteria for psychiatric conditions vs. physical health conditions

# Role of the Physician / Mental Health Professional

- Court appoints a physician or other qualified person. May also appoint a mental health professional (i.e. psychiatrist, psychologist, gerontologist, licensed social worker, or licensed counselor).
- Examine the allegedly incapacitated person and submit a report to the court regarding their condition with recommendations regarding whether the person is in need of a guardian.
- A letter from a physician and/or medical records are not required at the time the petition is filed but can be very helpful when an emergency temporary guardianship is being requested.

Source: Idaho Code 15-5-303; Ada County Magistrate Judge Jill Jurries



# Mental Holds & Guardianship

- Adults who have a guardian can be put on a mental hold.
- If a person with a guardian is placed on a hold, the designated examiner will typically contact the guardian to confirm they are willing to consent to treatment.
- If the guardian is not available and/or does not agree to give consent for treatment, the mental hold may proceed. Idaho Code may be interpreted differently throughout the state.
- Guardianship orders typically do not include language that give law enforcement authority to transport the person under guardianship to a hospital for treatment.
- Source: Idaho Code 66-329

# Boards of Community Guardians

- County-based program that appoints a volunteer guardian for an incapacitated adult.
- The Boards serve incapacitated adults who reside in their county who are indigent and have no relatives or friends who are able and willing to become their guardian or help meet their needs.
- The Boards review referrals, recruit, screen, and train volunteer guardians.
- Most counties in Idaho have a Board of Community Guardians

Source: <https://adacounty.id.gov/community-guardian/how-it-works/> & other Idaho counties' Board of Guardians websites

# Key Points

The bottom line is:

- Does the allegedly incapacitated person's mental health condition render them legally incapacitated?
- What is the allegedly incapacitated person's level of risk and functional impairment?
- Without the guardianship, is the allegedly incapacitated person likely to suffer substantial harm?

# References

- Idaho Code 15-5-101: Definitions and Use of Terms
- Idaho Code 15-5-303: Procedure for Court Appointment of a Guardian of an Incapacitated Person
- Idaho Code 15-5-310: Temporary Guardians of Incapacitated Persons
- Idaho Code 66-329: Hospitalization of Mentally Ill
- Idaho Supreme Court Bench Card regarding Guardianships of Incapacitated Adults
- Ada County Guardian Duties & Responsibilities website:  
<https://adacounty.id.gov/community-guardian/how-it-works/>
- Jill Jurries, Ada County Magistrate Judge

# Session Resources

Guardian Duties & Responsibilities: Informational website that provides a variety of information about being a guardian including rights & duties, decision making, medical care decisions, living arrangements, ward's rights, reports, terminating a guardianship, finances & compensation, & liability.

[https://adacounty.id.gov/judicial-court/court-administration/guardianship-monitoring-program/guardian-duties-and-responsibilities/#guides\\_to\\_help\\_decision\\_Making](https://adacounty.id.gov/judicial-court/court-administration/guardianship-monitoring-program/guardian-duties-and-responsibilities/#guides_to_help_decision_Making)