

# An Overview of Health Care Decisions & Medical Advocacy for Guardians in Virginia

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Guardians of an incapacitated person (“the person”) in Virginia are often responsible for making health care and medical decisions on behalf of the person. In this guide, we will explore potential challenges and practical strategies for guardians to maximize their role in medical advocacy for the person.

## The Role of Guardians in Health Care Decisions

It is common for a guardian to be given the authority to make health care decisions on behalf of the person. Guardians should review the Order of Appointment (“court order”) to gain a better understanding of their scope in making health care decisions. The decision-making approaches addressed in the Virginia Guardian Training can be applied to health care decisions. Those approaches are:

- **Ask the person and involve them** in the decision-making process.
- If the person cannot participate in the decision-making process but had capacity at one time, decide using **substituted judgment**.
- If the person cannot participate in the decision-making process and never had capacity to make their own decisions, act in the **best interest** of the person.

A key concept guardians should be aware of when using substituted judgment and best interest approaches as it relates health care decisions is **informed consent**. All individuals must be well-informed about the purpose, risks, benefits, and alternatives to any health care decision. For individuals who have a guardian, it is the responsibility of a guardian to collect the same information the person would need if the person were able to provide informed consent on their own.

## Strategies for Informed Consent

Guardians should directly speak with the treating physician to understand the decision presented, the risks and benefits associated with the options, and any alternative options available, including what is considered least restrictive. At times it may feel uncomfortable for a guardian to collect this information from medical providers. This can be especially true if the presenting issue is complex. While every circumstance is different, try using the following phrases to gather as much information as possible:

- “Help me to understand the issue.”
- “What negative experiences does the person need to undergo to experience the benefits of this option?”
- “This is where I think we are. Please help me understand where we might be in six months.”

- “Why are you prescribing this medication?”
- “What are the risks and side effects?”
- “Do I need to change their daily routine?” or “How will their daily routine be affected?”

Ask the medical provider if there is time to consider all options before deciding. If possible, avoid making an immediate decision until all options, risks, and benefits can be considered. Consult with other service providers involved such as case managers, other medical providers, and natural support systems who are actively involved in the person’s life. However, it is important to not overshare and respect the person’s right to confidentiality. The person should always be at the center of the discussion; personal opinions should never influence the decision. It is normal for guardians to feel pressure or overwhelmed when it comes to decision-making on behalf of the person. That is why it is important to communicate often with the professionals involved in the person’s health care.

Guardians may seek a second opinion as time permits, especially when faced with a life-altering diagnosis or decision. A second opinion can be from another physician or a specialist. Talk with the person’s health insurance provider about second opinion coverage. Be sure to ask the second doctor what medical records they will need prior to the visit.

### **Medical Advocacy for the Person**

In addition to informed consent, guardians serve as a medical advocate for the person. This means advocating for the goals of the person and make sure their values and interests are at the forefront of their health care decisions. Guardians are responsible for expressing the person’s wishes and concerns to medical providers if the person is unable to do so themselves.

The person may have difficulty outright expressing their goals, values, and interests as it relates to their health. However, there are questions guardians can ask to gain a better understanding, such as:

- What brings you joy, or makes you happy?
- What makes you sad? Scared?
- What helps you live your best life?
- What needs to happen today to make it your favorite day ever?

Responses to these questions can help a guardian determine what the person feels is important in their life. This can help drive any decisions or discussions had that involves the person’s health. Guardians will need to share this information with medical providers. For example, if the person says they are afraid of needles and a doctor recommends treatment that involves a daily injection, the guardian must share this fear and advocate for another option if available.

It is also important to understand the person’s religious or cultural background as this may impact the person’s decisions regarding their health. Certain religions may not believe in blood transfusions, for example, and this vital information must be honored and shared with medical

professionals. If the person practices a religion, ask the person to explain how they practice. If they are unable to explain fully or at all, the guardian should complete their own research and consult with others, such as family, natural support, or clergy members.

## **Conclusion**

Guardians in Virginia play a vital role in advocating for the health and well-being of incapacitated individuals by making informed, compassionate health care decisions on their behalf. Understanding the scope of their authority, actively seeking comprehensive information, and centering the person's values, goals, and cultural or religious beliefs are essential components of effective medical advocacy. While the responsibility can feel overwhelming, guardians who communicate openly with medical providers, involve the person whenever possible, and prioritize respect and empathy can significantly enhance the quality of care and support the person's dignity and autonomy throughout their health care journey.