



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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MEMORANDUM

DATE: September 27, 2013

TO: Ms. Shauna Hagan
Ms. Tania Culley

FROM: Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: Proposed Change in Guardianship Statute

DMP/KH

The State Council for Persons with Disabilities (SCPD) has reviewed the Disabilities Law Program's September 20, 2013 letter regarding proposed amendments to the guardianship statute. SCPD strongly endorses the comments and recommendation to adopt a clear and convincing evidence standard with the burden of proof on the guardian.

Thank you for your consideration and Council appreciates the collaboration on issues of mutual interest. Please contact SCPD if you have any questions or comments regarding our position on the proposed amendments.

cc: Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

P&I/guardianship statute 9-27-13



DISABILITIES LAW PROGRAM

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MEMORANDUM

To: Shauna Hagan and Tania Culley

From: Brian J. Hartman
Project Director, Disabilities Law Program

Re: Proposed Change in Guardianship Statute

Date: September 20, 2013

I am responding to the September 11 solicitation for feedback on the standard of proof to be included in the proposed legislation revising Title 13 Del.C. Ch. 23.

In the context of recision and initial applications for guardianship of minors, I recommend adoption of a clear and convincing evidence standard with the burden on the guardian. My rationale is as follows.

First, adoption of a clear and convincing evidence standard is manifestly more aligned with the philosophy espoused in the Delaware Supreme Court's Tourison decision. In Tourison, the Court unequivocally adopted a clear and convincing evidence benchmark which "respects a parent's fundamental right to care for his or her children by making it extremely difficult for a third party to overcome a fit parent's petition to rescind a guardianship." At 7. In drafting a conforming statutory framework, any benefit of the doubt should be accorded to making it "extremely difficult" to overcome the parent's application for rescission. The Court's manifest emphasis on deference to fundamental parental rights likewise supports adoption of a clear and convincing standard for initial petitions.

Second, it is an unfortunate reality that parents with disabilities are disproportionately divested of their children in various forms of child welfare proceedings. See University of Minnesota, Policy Research Brief: The Inclusion of Disability as Grounds for Termination of Parental Rights in State Codes (2006), available at <http://ici2.umn.edu/products/prb/172/default.html>. See also National Council on Disability, Rocking the Cradle: Ensuring the Rights of Parents with Disabilities and Their Children (2012), endnote 256, available at [National Council on Disability: Publications & Policy Briefs: 2012 Publications: Rocking the Cradle: Ensuring the Rights of Parents with Disabilities and Their Children](#). Both publications note that the rationale for the disproportionate removal of children is often based on stereotypes and misconceptions about diagnosed disabilities. Adoption of a clear and convincing evidence standard, while not a stand-alone solution to this problem, would focus attention on evidentiary proof as juxtaposed to stereotypes and inferences.

Third, in 1981, the Family Court was given “concurrent authority to appoint guardians of the person over minors under 18 years of age with the Court of Chancery.” See synopsis to attached engrossed S.B. No. 247 (Attachment “A”). The relevant authorization [Title 10 Del.C. §925(16)] was placed in the “general jurisdiction” statute [§925] rather than the “exclusive jurisdiction” statute [§921]. Later enactment of Title 13 Del.C. §2303(a) is consistent with the conferral of general, but not exclusive, Family Court jurisdiction over actions related to guardianship of minors. Chancery Court continues to have jurisdiction over guardianship of minors. See Title 12 Del.C. §3901(a)(1) and §3902. In 2012, Vice Chancellor Noble issued a well reasoned decision holding that a “clear and convincing evidence standard” must be used in cases involving petitions for termination/rescission of guardianship. For facilitated reference, a copy of the redacted opinion is included as Attachment “B”. The Court relied, in part, on precedents involving parental rights:

Most states recognize the consequences that result from the appointment of a guardian and have responded by imposing, through statute, a clear and convincing evidentiary standard. ... The United States Supreme Court has taught that, for a wide range of government actions limiting personal choice, the proper standard is clear and convincing. These personal interests include parental rights, civil commitment, deportation, and denaturalization. ... Thus, the OPG must demonstrate by clear and convincing evidence that Ms. B continues to need a guardian of the person.

At 5-6. The bottom line is that it would be jurisprudentially anomalous to recommend legislation creating a different standard of proof in Family Court cases involving rescission of guardianship than already adopted by the Court of Chancery. Moreover, the Chancery Court’s reasoning also extends to initial petitions for guardianship. Citing an ABA compilation, the Court observed that “(m)ost states recognize the consequences that result from the appointment of a guardian and have responded by imposing, through statute, a clear and convincing evidentiary standard.” At 4. In fact, the most recent ABA compilation reveals that almost every state which has adopted a benchmark by statute has adopted a clear and convincing evidence standard applicable to petitions for guardianship. See Attachment “C” available at

http://www.americanbar.org/content/dam/aba/administrative/law_aging/2013_04_CHARTConduct.pdf-15k-2013-05-01.

Thank you for your consideration of the above commentary.

Attachment

8g:clearandconmemo91813

Gov signed
7-9-81



SPONSOR: Sen. Sharp, McDowell,
Zimmerman, Vaughn, Hughes,
Cairo; Rep. Riddagh

DELAWARE STATE SENATE
131ST GENERAL ASSEMBLY

JUL 9 1981

63 133

SENATE BILL NO. 247

MAY 19 1981

AN ACT TO AMEND SECTION 925, TITLE 10, DELAWARE CODE, GIVING FAMILY COURT CONCURRENT JURISDICTION WITH THE COURT OF CHANCERY TO APPOINT GUARDIANS OF THE PERSON OVER MINORS UNDER 18 YEARS OF AGE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

- 1 Section 1. Amend Section 925, Title 10, Delaware Code, by adding a subsection (16) thereto, to read
- 2 as follows:
- 3 "(16) To appoint guardians of the person over minors under 18 years of age."

SYNOPSIS

This act gives Family Court concurrent authority to appoint guardians of the person over minors under 18 years of age with the Court of Chancery. Author - Sen. Sharp

Attachment "A"



COURT OF CHANCERY
OF THE
STATE OF DELAWARE

JOHN W. NOBLE
VICE CHANCELLOR

417 SOUTH STATE STREET
DOVER, DELAWARE 19901
TELEPHONE: (302) 739-4397

July 31, 2012

Suzanne I. Seubert, Esquire
Suzanne I. Seubert, P.A.
1328 King Street
Wilmington, DE 19801

Lexie S. McFassel, Esquire
Office of the Public Guardian
100 Sunnyside Road
Smyrna, DE 19977

Re: *IMO* [REDACTED]
C.M. No. [REDACTED]-VCN
Date Submitted: April 9, 2012

Dear Counsel:

The Office of Public Guardian ("OPG") was appointed guardian of the person of [REDACTED] in 2007. Ms. [REDACTED] has petitioned for termination of the guardianship.¹ This Letter Opinion sets forth the Court's post-trial findings of fact and conclusions of law.²

¹ Ms. Seubert has volunteered her services on Ms. [REDACTED]'s behalf. The Court appreciates her contributions.

² The question is whether Ms. [REDACTED] needs a guardian for her person. There is no room for doubt that OPG is an appropriate guardian for her, if she, indeed, does need a guardian.

* * *

Ms. [REDACTED] in her late 20s, suffers from Type 1 diabetes and end-stage renal failure.³ She resides at the [REDACTED] where she receives sustained professional medical care. OPG was appointed her guardian shortly after a hypoglycemic episode that resulted in a coma. Her inability, at the time, to understand the risks and consequences of failing to manage her significant health problems formed the basis for OPG's appointment. In the interim, she has gained a better understanding of the potential outcome of a gap of attention to her sugar levels. She states that her death might be an outcome. She also has made progress in learning how to manage her blood sugar levels, including the effects and importance of diet.

There is no doubt, at least for now, that Ms. [REDACTED] requires essentially full-time access to medical care that is most readily obtained in a residential setting, such as that at [REDACTED]. OPG has sought alternate living arrangements for her; that has been an effort without success. Thus, [REDACTED] appears to be the only viable care option for Ms. [REDACTED]. At the core of the debate is the all-too-facilely phrased

³ Ms. [REDACTED]'s cognitive function falls within the extremely low range of the adult population her age, and her abstract thinking skills are quite limited.

question: should Ms. [REDACTED] be at [REDACTED] as a matter of her own desire or as the result of a decision by a court-appointed guardian, such as OPG? In terms of day-to-day living, the answer may not seem, for some, to make much difference, but an individual's right to decide questions of this nature is an important and fundamental one both for the individual and for our society. The question is a significant one, not only at the individual, personal level, but also at the more abstract level of an individual's freedom of choice within a specific societal context.

* * *

The source of this Court's authority to appoint guardians of the person for adults is found in statute:⁴

The Court of Chancery shall have the power to appoint guardians for the person . . . of any disabled person "Disabled person" means any person who: . . . [b]y reason or mental or physical incapacity is unable properly to . . . care for their own person . . . and, in consequence thereof, . . . such person is in danger of substantially endangering [the] person's own health, . . .⁵

⁴ *Severns v. Wilmington Medical Ctr., Inc.*, 421 A.2d 1334 (Del. 1980).

⁵ 12 Del. C. § 3901(a)(2).

Appointing a guardian of the person deprives that person of some of our society's most fundamental individual rights—where we live; what we eat; and what we do. In Ms. [REDACTED]'s case, the OPG placed her at [REDACTED] in what may be considered a custodial care arrangement. That arrangement may be—and likely is—in her best interest, but it still deprives her of freedom of choice. The placement not only prevents her from choosing where to live, but it also subjects her to [REDACTED]'s internal operating rules—such as phone access, who can visit, and the like.

Most states recognize the consequences that result from the appointment of a guardian and have responded by imposing, through statute, a clear and convincing evidentiary standard.⁶ Delaware's statutory scheme for adult guardianships does not prescribe any particular standard, and there are cases which have applied a preponderance of the evidence standard.⁷ Because of the fundamental liberty interests at stake, the standard applicable to protecting those interests naturally has

⁶ Sally Balch Hurme and ABA Comm'n. on Law and Aging, *Conduct and Findings of Guardianship Proceedings* (2012), available at http://www.americanbar.org/content/dam/aba/uncategorized/2012_aging_gship_chrt_conduct_06_12.authcheckdam.pdf.

⁷ See, e.g., *In re Snow*, 2006 WL 223598 (Del. Ch. Jan 17, 2006); *Brittingham v. Robertson*, 280 A.2d 741 (Del. Ch. 1971); *In re Conner*, 226 A.2d 126 (Del. Ch. 1967).

constitutional overtones.⁸ The United States Supreme Court has taught that, for a wide range of government actions limiting personal choice, the proper standard is clear and convincing. These personal interests include parental rights, civil commitment, deportation, and denaturalization.⁹ The appointment of a guardian falls in line with the circumstances of these examples. Indeed, the limitations on individual rights may be more serious when a guardian is appointed.¹⁰ Thus, the

⁸ The earlier Delaware cases dealing with the appointment of a guardian did not develop any analysis to support the selection of any particular standard of proof.

⁹ See *Santosky v. Kramer*, 455 U.S. 745, 747-48 (1982) ("Before a State may sever completely and irrevocably the rights of parents in their natural child, due process requires that the State support its allegations by at least clear and convincing evidence."); *Addington v. Texas*, 441 U.S. 418, 424 (1979) ("We noted earlier that the trial court employed the standard of 'clear, unequivocal and convincing' evidence in appellant's [civil] commitment hearing before a jury. That instruction was constitutionally adequate. However, determination of the precise burden equal to or greater than the 'clear and convincing' standard which we hold is required to meet due process guarantees is a matter of state law which we leave to the Texas Supreme Court."); *Woodby v. INS*, 385 U.S. 276, 286 (1966) ("We hold that no deportation order may be entered unless it is found by clear, unequivocal, and convincing evidence that the facts alleged as grounds for deportation are true."); *Chaunt v. United States*, 364 U.S. 350, 353 (1960) ("[I]n view of the grave consequences to the citizen, naturalization decrees are not lightly to be set aside—the evidence must indeed be 'clear, unequivocal, and convincing' and not leave 'the issue in doubt.'" (citations omitted).

¹⁰ Some states have gone so far as to require proof beyond a reasonable doubt for the appointment of a guardian. See *Hurme*, *supra* note 6. See also *In re Kapitula*, 889 A.2d 250, 253 (N.H. 2006) ("The probate court may appoint a guardian over the person if it makes the findings set forth in paragraph III(a) through (d). These findings must be in the record, and must have been based upon evidence supporting them beyond a reasonable doubt.").

OPG must demonstrate by clear and convincing evidence that Ms. [REDACTED] continues to need a guardian of her person.¹¹

* * *

Jorge Pereira-Ogan, M.D., a psychiatrist whose practice focuses on a patient's capacity to understand and to consent to a course of treatment, evaluated Ms. [REDACTED] and concluded that she could, and thus should be allowed to, make her own decisions. Dr. Pereira-Ogan acknowledged Ms. [REDACTED]'s low cognitive skills, but his conversations with her and her score of 28 on the mini-mental status exam, persuaded him that she has the capacity to deal with her difficult medical issues.¹² After five years at [REDACTED], Ms. [REDACTED] has learned about her medical problems and she has come to understand the appropriate strategies for addressing them. Dr. Pereira-Ogan pointed out that noncompliance with medical instructions is common in more than half of seriously ill patients, most of whom would pass any mental capacity assessment. He conceded that Ms. [REDACTED]'s fragile condition increased

¹¹ Thus, although Ms. [REDACTED] is the moving party in terms of seeking termination of the guardianship, the burden is on OPG to demonstrate that continuing the guardianship is proper.

¹² The mini-mental status exam is a standard tool for screening cognitive impairment. A perfect score is 30. Both in 2007 when OPG was appointed her guardian (25) and more recently (28), [REDACTED] score would support her claim to understand her circumstances appropriately. The mini-mental status exam, however, is not dispositive. It is one factor guiding the diagnostic process.

the risks associated with noncompliance, but he maintained that a guardianship was not necessary to minimize those risks. [REDACTED] houses voluntary patients as well, and remaining at [REDACTED] would be an option for Ms. [REDACTED].

Cristina Rawley, a social worker at [REDACTED], provides care management services to Ms. [REDACTED]. She has observed Ms. [REDACTED]'s efforts to monitor and to learn more about her diabetes. She also has helped Ms. [REDACTED] with paperwork for a possible kidney/pancreas transplant.¹³ Ms. Rawley reports that Ms. [REDACTED] is very social, helps other [REDACTED] residents, and meets her own personal care needs. It is obvious to Ms. Rawley that Ms. [REDACTED] does not want to be at [REDACTED]; she wants to live the life of a typical 29-year old. Yet, Ms. [REDACTED] has told Ms. Rawley that she would remain at [REDACTED] until her sugar levels could be stabilized.

Somasunderam Padmalingam, M.D. is Ms. [REDACTED]'s treating physician at [REDACTED], a role that gives him the benefit of repetitive contact with her and allows him the opportunity to assess her strengths and weaknesses over time.¹⁴ He emphasized that her very brittle case of Type 1 diabetes requires incessant care,

¹³ OPG is generally supportive of the effort, but there are numerous issues to resolve as part of the process.

¹⁴ At the time of trial, he had only been her treating physician for a period of approximately three months.

involving the constant evaluation of her blood sugars, especially because she is very sensitive to insulin. In his forty years of practice, Dr. Padmalingam has never seen a patient with the fluctuations that Ms. [REDACTED] has experienced in her blood sugars—a range from 27 mg/dl to above 600 mg/dl.¹⁵ His concerns include anoxic encephalopathy which can result from low or high blood sugars at the levels Ms. [REDACTED] has reached. Brain damage—or worse—may result.

Dr. Padmalingam holds the opinion that Ms. [REDACTED] is not ready to be in the community free from protection and supervision of a guardian. At the core of his worries are doubts about Ms. [REDACTED]'s capacity to control herself and her understandable, but counterproductive, desires. There certainly are times when she follows medical recommendations, but there is not the regular compliance that would be essential to her health if she were acting independently. Noncompliance is the term that Dr. Padmalingam used to describe her general reaction to important medical guidance. Because she is not adherent to those instructions, there is a sizable risk that her actions will result in a situation of dangerous consequences. It is not merely a matter of compliance; there is also genuine doubt about Ms.

¹⁵ The normal range is between 70 mg/dl and 110 mg/dl.

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[REDACTED]'s capacity to make the right judgment. Dr. Padmalingam's ultimate judgment—and one that is difficult to disagree with—is that she is not fit to make decisions about her medical condition that will lead her to act in an appropriate way to salvage her life.

Although Dr. Pereira-Ogan and Dr. Padmalingam come to different conclusions as to whether Ms. [REDACTED] is able to be responsible for her health care issues, their views are not that far apart. Dr. Pereira-Ogan is keenly aware of the unique problems that arise from the confluence of Ms. [REDACTED]'s limited capacity and her pernicious disease. Dr. Padmalingam is sensitive to a guardian's impingement on individual decision making when it comes to health care. They—like the Court—were ultimately required to balance difficult and conflicting considerations.

* * *

Ms. [REDACTED] has, more or less, mastered the ability to say some of the right things. She acknowledges the need to watch diet, to monitor blood sugars, and to react appropriately. She also can tell of the potential adverse consequences if she does not take proper care of herself. Being able to talk about these topics,

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however, does not show that she really appreciates what is going on or that she has the capacity and understanding to live as she must in order to survive. Her desire to live a "normal" life is readily understood¹⁶; it is skepticism about her ability to withstand the temptation to do so—with all of its adverse consequences for her in light of her medical conditions—that persuades the Court, by clear and convincing evidence, that a guardian is necessary.

It is not her health and the difficult challenges that it presents that alone justify the need for a guardian. It is not merely a matter of the doubt about her appreciation and understanding of the potential consequences that might result from a slight deviation away from the necessary, but narrow, path of maintenance. It is not only the experiential history which, when she has been unsupervised, has resulted in conduct leading to extremely dangerous circumstances and where, with the benefit of a guardian—and, perhaps more importantly, institutional assistance—her condition has remained stable. It is the confluence of all these factors—as unusual and extreme as they are—that compels the conclusion that she currently lacks the capacity to take the necessary and, undoubtedly, burdensome

¹⁶ See Aff. of Carolyn Barnes, Ph.D. ¶ 5 ("A major issue for [REDACTED] has been managing disappointments, frustrations and accepting the restrictions that apply to diabetic patients or other residents at [REDACTED] and those set by her guardian.").

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steps to protect her fragile health. Perhaps these circumstances will change with time, and she can be relieved of the limitations inevitably associated with a Court-appointed guardian. That time, based on the trial evidence, has, unfortunately, not yet arrived. OPG has demonstrated by clear and convincing evidence that a guardian of the person is necessary for the care of Ms. [REDACTED] person.¹⁷ Otherwise, her minimal mental capacity would impair her ability to care for herself and place her at risk of substantially endangering her health.¹⁸

* * *

Ms. [REDACTED]'s application for termination of the guardianship must be denied. OPG will continue as guardian of her person.¹⁹

IT IS SO ORDERED.

Very truly yours,

/s/ John W. Noble

JWN/cap

cc: Register in Chancery-K

¹⁷ Ms. [REDACTED] life has been difficult in ways extending well beyond her health. It does not appear that she has family or friends who can be counted on to help to provide the support that she needs to deal with her serious medical issues.

¹⁸ In short, the Court accepts Dr. Padmalingham's testimony, and, for that and other reasons, finds that Ms. [REDACTED] is a disabled person within the meaning of 12 Del. C. § 3901(a).

¹⁹ The Court is not persuaded that it would be practicable or beneficial to attempt to restrict (or to set special rules to guide) the guardian.

Conduct and Findings of Guardianship Proceedings
(As of statutory revisions December 31, 2012)

<u>State</u>	<u>Hearing</u>	<u>Convenient Location</u>	<u>Presence in Court</u>	<u>Jury Trial</u>	<u>Standard of Proof</u>	<u>Required Findings</u>	<u>Tailored Order</u>
UGPPA	305(a), 405(a) Shall set a date and time for hearing	308(a), 408(a) May be held in location convenient to respondent	308(a), 408(a) Respondent and proposed guardian or conservator shall appear unless excused for good cause	<i>Not stated</i>	311(a)(1) Clear & convincing 409(b) A basis exists	311(a)(1) Is incapacitated person, needs cannot be met by less restrictive means 409(b) A basis exists for conservatorship, make least restrictive order consistent with findings	311(b) Make orders necessitated by limitations and needs, that encourage self reliance and independence 409(b) Make orders necessitated by limitations and needs, that encourage self reliance and independence
Alabama:	26-2A-135(b) Court set hearing date when petition filed 26-2A-102	<i>Not stated</i>	26-2A-102(c) Entitled to be present	26-2A-35 Entitled to jury trial 26-2A-102(c) Trial by jury, upon demand	<i>Not stated</i>	26-2A-105(a) Court authority only to extent necessitated by condition or limitations	26-2A-154 26-2A-136 26-2A-144
Alaska: Statute	13.26.106 (a) Conducted within 120 days from filing the petition	<i>Not stated</i>	13.26.113(a)(5) Unless disruptive	13.26.113(a)(6) Entitled to jury trial	13.26.113 (b) Clear & convincing	13.26.090 Used only as is necessary	13.26.116
Arizona: Rev. Stat. Ann.	14-5303 Upon filing petition, court shall set hearing date	<i>Not stated</i>	14-5303(C) Entitled to be present	14-5303(C) Entitled to jury trial	14-5304(A) Clear & convincing	14-5304(B) Appointment is necessary & needs cannot be met by less restrictive means including technological assistance	14-5312(A) Statutory powers unless modified by court 14-5304(C) May appoint limited guardian & specify time limits & limits on powers

Attachment "C"

Conduct and Findings of Guardianship Proceedings
(As of statutory revisions December 31, 2012)

<u>State</u>	<u>Hearing</u>	<u>Convenient Location</u>	<u>Presence in Court</u>	<u>Jury Trial</u>	<u>Standard of Proof</u>	<u>Required Findings</u>	<u>Tailored Order</u>
Arkansas: Code Ann.	28-65-213(a)	<i>Not stated</i>	28-65-211(b)(3) May require presence in court 28-65-213(a)(5) Right to attend	<i>Not stated</i>	28-65-213(b) Clear & convincing	28-65-105 Ordered only to extent necessitated by individual's limitations	28-65-105 28-65-106 Ward retains all rights except those expressly granted to guardian
California: Prob. Code	1822 Set at least 15 days before the hearing	<i>Not stated</i>	1825(a) Present except medical inability 1823(b)(5) Right to attend	1827 If demanded	1801(e) Clear & convincing	<i>Not stated</i>	2351 Court discretion to limit 1801 For developmentally disabled
Colorado: Rev. Stat. Ann.	15-14-308	<i>Not stated</i>	15-14-308(1) Shall attend unless good cause	15-14-303(4) On written demand	15-14-311(1) Clear & convincing	15-14-311(1) Court make appointment only to extent necessitated by condition or limitation; no less restrictive means	15-14-311 Shall consider least restrictive alternative; may limit powers

Conduct and Findings of Guardianship Proceedings
(As of statutory revisions December 31, 2012)

<u>State</u>	<u>Hearing</u>	<u>Convenient Location</u>	<u>Presence in Court</u>	<u>Jury Trial</u>	<u>Standard of Proof</u>	<u>Required Findings</u>	<u>Tailored Order</u>
Connecticut: Gen. Stat. Ann.	45a-649 45a-650	45a-649(e) May hold at place that would facilitate attendance by respondent	45a-650(a) Right to attend	<i>Not stated</i>	45a-650(f)(1), (2) Clear & convincing	45a-650(f)(1) Incapable of managing affairs, cannot be managed without appointment, appointment is least restrictive 45a-650(f)(2) Incapable of caring for self, cannot be cared for adequately without appointment, appointment is least restrictive 45a-650(g) Comprehensive list of factors court must consider	33-15-4 Shall clearly indicate scope of powers and duties; certificate shall clearly state is limited
Delaware: Code Ann. tit. 12	12 3901(c)	<i>Not stated</i>	<i>Not stated</i>	<i>Not stated</i>	<i>Not stated</i>	<i>Not stated</i>	12 3922 To extent court may direct
District of Columbia: Code Ann.	21-2054 (a)	<i>Not stated</i>	21-2041(h) Unless good cause shown		21-2003 Clear & convincing	21-2044(b) Appointment necessary for care & supervision	21-2047(b)(6) 21-2072
Florida: Stat. Ann.	744.331(4)	<i>Not stated</i>	744.331(5) (b) Waived for good cause	<i>Not stated</i>	744.331(6) Clear & convincing	744.331(6)(a) Nature and scope of capacities, areas lack capacity, specific legal disabilities, specific rights incapable of exercising and if alternative	744.3215(1) 744.334(2)

Conduct and Findings of Guardianship Proceedings
(As of statutory revisions December 31, 2012)

State	Hearing	Convenient Location	Presence in Court	Jury Trial	Standard of Proof	Required Findings	Tailored Order
Georgia: Code Ann.	29-4-12	29-4-12(d) Courtroom or where the judge may choose	29-4-12(d) May be waived for good cause	<i>Not stated</i>	29-4-12(d) Clear & convincing	29-4-1(c) Determination that LRA not available or appropriate	29-4-12(d) List powers to be retained 29-4-13(3) Limits in order 29-4-20(6) Right to least restrictive assistance
Hawaii: Rev. Stat.	560:5-308 Guardian shall attend	560:5-308, -408 Convenient, closed if requested	560:5-308 Shall attend and participate unless excluded 560:5-408 shall attend and participate unless excused for good cause	<i>Not stated</i>	560:5-311(a) Clear & convincing 560:5-401(2) Clear & convincing that unable to manage and preponderance that be wasted unless managed by conservator	560:5-311(a), - Needs not met by least restrictive alternative 560:5-401 Property be wasted unless managed	560:5-311 Shall grant only what necessitated by ward's limitations and needs, encourage maximum self-reliance and independence
Idaho: Code	15-5-303(b)	<i>Not stated</i>	15-5-303(c) Required unless good cause	15-5-307 For removal of guardian	15-5-304 (b) If court satisfied	15-5-304(a) Court shall appoint only to extent necessitated by condition and limitations	15-5-426 15-5-408 15-5-304 To extent necessary
Illinois: 75/5 Ill. Comp Stat.	5/11a-10(a)	<i>Not stated</i>	5/11a-11(a) unless respondent refuses	5/11a-11(a)	5/11a-3(a) Clear & convincing	5/11a-12(b) If respondent lacks some but not all capacity and court finds guardianship necessary for protection or person or estate, the court may appoint a limited guardian	5/11a-12(b) Court shall appoint a limited guardian and specify duties and powers of the guardian and the legal disabilities of the disabled person

Conduct and Findings of Guardianship Proceedings
(As of statutory revisions December 31, 2012)

<u>State</u>	<u>Hearing</u>	<u>Convenient Location</u>	<u>Presence in Court</u>	<u>Jury Trial</u>	<u>Standard of Proof</u>	<u>Required Findings</u>	<u>Tailored Order</u>
Indiana: Code Ann.	29-3-5-19 (c)	<i>Not stated</i>	29-3-5-1(d) 29-3-5-1(d) Impossible, impractical, threat to health, safety	29-3-5-1(e) If requested	<i>Not stated</i>	29-3-5-3(a)(2) Providing care & supervision	29-3-5-3(b) 29-3-7-3(c) 29-3-8-8 29-3-5-1 Community volunteer advocate for 55+ for 60 days max. 29-3-5-3 Can represent and protect interests, gather information, facilitate care, advocate for rights 29-3-8-5-9 No medical decisions if spouse, other surrogate available
Iowa: Code Ann.	<i>Not stated</i>	<i>Not stated</i>	633.561(2) Right to be present	633.555 If demanded	633.551(1) Clear & convincing	<i>Not stated</i>	633.551(A) 633.556(2) 633.635(3)
Kansas: Rev. Stat. Ann.	59-3063(a)(1) Trial in as informal a manner as consistent with orderly procedure	59-3063(a)(1) Courtroom, treatment facility or other suitable place	59-3063(a)(2) Required to appear unless injurious to health or welfare or could not meaningfully participate or waived	59-3066(a)(8) &(9); 59-3067(b) & (c) Right to demand	59-3067(e) Clear & convincing	59-3067(e) Court must find need for guardian, conservator, or both	59-3075 Guardian exercise authority as necessitated by ward's limitations; 59-3075 Guardianship plan
Kentucky: Rev. Stat. Ann.	387.550	<i>Not stated</i>	387.570(3) Waived only if serious risk of harm	387.570(1) Mandatory	387.570(5) Clear & convincing	<i>Not stated</i>	387.500

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<u>State</u>	<u>Hearing</u>	<u>Convenient Location</u>	<u>Presence in Court</u>	<u>Jury Trial</u>	<u>Standard of Proof</u>	<u>Required Findings</u>	<u>Tailored Order</u>
Louisiana: Civ. Code Ann.; Code Civ. Pro.; Rev. Stat Ann.	CCP Art. 4547	CCP 4547 Judge may hold hearing where respondent located	CCP 4547 Right to be present. Court shall not conduct hearing in absence unless good cause.	<i>Not stated</i>	CCP 4548 Clear & convincing	389 Interests cannot be protected by less restrictive means	390; 455 1(B); Only powers necessitated CCP 4541 Petition names powers sought to be removed
Maine: Me. Rev. Stat. Ann. tit. 18	18-A 5-303(b)	<i>Not stated</i>	18-A 5-303(c) entitled to be present, see and hear all evidence 18-A 5-304(b)(2) If individual does not appear, court must determine if inquiry was made as to whether individual wished to appear	<i>Not stated</i>	18-A 5-304(b) Clear & convincing	18-A 5-304(a) Court shall appoint only if necessitated by limitations or condition	18-A 5-105 18-A 5-408 18-A 3-304 (a)
Maryland: Code Ann., Est & Trusts; MD Rules	R77(b)(2)	<i>Not stated</i>	13-705(e) At ward's option	13-705(e) Ward's option in guardianship 13-211 No jury trial in protective proceedings	13-705 Clear & convincing	13-705(b) No less restrictive form is available	13-708(a) As necessary
Massachusetts: Gen. Laws ch. 190B	<i>Not stated</i>	<i>Not stated</i>	5-106(c) Entitled to be present at any proceeding	<i>Not stated</i>	<i>Not stated</i>	5-306(b) That guardianship is desirable to provide care and supervision and needs not met by lesser restrictive alternative	5-306(c) May limit powers granted

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Michigan: Comp. Laws Ann.	700.5303a 700.5406	700.5306a(1)(b) 700.5406(5) Conduct hearing were present	700.5304(4) 700.5406(5) Entitled to be present	700.5304(5) 700.5406(5) Entitled to jury	700.5306(1) 700.5406(7) Clear & convincing	700.5306 (1) If necessary for providing care & supervision	700.5306 700.5407 Only those powers necessary, encourage self- reliance, shall specify powers and time limit
Minnesota: Stat. Ann.	524.5-307(a) & 408(a)	524.5-307(a) & 408(a) Location convenient to respondent	524.5-307(a) & 408(a) Shall attend & participate unless excused for good cause	<i>Not stated</i>	524.5-310(a) & 409(a) Clear & convincing; 409(a)(2) Preponderance that resources be wasted or dissipated or needed for support, care	524.5-310(a) Needs cannot be met by least restrictive alternative	524.5-310(a) Limited or not; 310(c); 409(c) Only power necessitated by demonstrated need & encourage self- reliance; retain rights not specifically granted
Mississippi: Code Ann.	93-13-121	<i>Not stated</i>	<i>Not stated</i>	<i>Not stated</i>	<i>Not stated</i>	<i>Not stated</i>	93-13-38 Court has power as over executor
Missouri: Ann. Stat.	475.075.1	<i>Not stated</i>	475.075(8) Right to be present	475.075(8)(2) Right to jury	475.075.7 Clear & convincing	475.075(10) Shall apply least restrictive environment principle	<i>Not stated</i>
Montana: Code Ann.	72-5-315	<i>Not stated</i>	72-5-315(4) Entitled to be present	72-5-315(4) Entitled to jury	72-5-316(1) If court satisfied	72-5-316 Necessary to promote & protect wellbeing	72-5-320 72-5-430 72-5-321 72-5-306
Nebraska: Rev. Stat.	30-2619(b)	<i>Not stated</i>	30-2619(d) Entitled to be present	<i>Not stated</i>	30-2620 Clear & convincing	30-2620 Necessary or desirable as least restrictive alternative	

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Nevada: Rev. Stat	159.047	159.0535(2) Video conference if cannot attend and in state	159.0535(1) Must attend, unless physician or other qualified professional certifies condition & that cannot attend, if attendance be detrimental and if inform of rights	<i>Not stated</i>	159.055(1) Clear & convincing proof that guardianship necessary	159.055 Evidence sufficient & guardian should be appointed	159.054(2) Shall specify powers & duties if limited capacity
New Hampshire: Rev. Stat. Ann.	464-A:5	<i>Not stated</i>	464-A:8 Must be present unless excused under provisions of this chapter	<i>Not stated</i>	464-A:8IV Beyond reasonable doubt	464-A:1 Only to extent necessitated by individual's functional limits	464-A:1 464-A:9(III)(d) 464-A:25(II)
New Jersey: Stat. Ann.; N.J. Rules	3B:12-5	<i>Not stated</i>	3B:12-24.1(e) Shall appear unless plaintiff & ct. appointed attorney certify unable	3B:12-24 May be had without jury unless demanded by alleged incapacitated person	<i>Not stated</i>	<i>Not stated</i>	3B:12-24.1(b) Court can appoint limited guardian
New Mexico: Stat. Ann.	45-5-303(C)	45-5-303(G) At the location of alleged incapacitated person who is unable to appear in court	45-5-303(F) Shall be present at hearing	45-5-303(L) Upon request of petitioner or alleged incapacitated person	45-5-303(H) Clear & convincing	45-5-301.1 Only as necessary to promote and protect well being of the person	45-5-301.1 45-5-304(c) 45-5-312 45-5-303(A)(10)
New York: Mental Hyg. Law	81.11	81.11 At courthouse or where person resides	81.11 Hearing must be conducted in presence of person alleged to be incapacitated	81.07(c)	81.12 Clear & convincing	81.02 Least restrictive form of intervention	81.01

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North Carolina: Gen. Stat.	35A-1112	<i>Not stated</i>	<i>Not stated</i>	35A-1110 Right, upon request	35A-1112(d) Clear, cogent & convincing	<i>Not stated</i>	35A-1212 Clerk may order limited guardianship; 35A-1215(b) Clerk may order that ward retain certain rights & privileges
North Dakota: Cent. Code	30.1-29-07(2) 30.1-28-03(3)	30.1-28-03(8) At any other location in best interest of proposed ward	30.1-28-03(7) Must be present unless good cause shown	<i>Not stated</i>	30.1-29-7(2)(b) Clear & convincing	30.1-28-04(1) Only to extent necessitated	
Ohio: Rev. Code Ann.	2111.02(c)	<i>Not stated</i>	2111.04(A)(2) Right to be present	<i>Not stated</i>	2111.02(c)(3) Clear & convincing	2111.02(c)(5) Evidence of least restrictive alternative may be introduced and considered	2111.02(B)(1) Limited guardian if in best interest
Oklahoma: Stat. Ann. tit. 30	30-3-109	30 1-116(A) At such place as court directs	30 3-106 Right to be present	<i>Not stated</i>	30-3-111 Clear & convincing	30 3-111(B) Court shall explain reasons not to impose less restrictive alternatives	30 3-111(B) Full or limited guardian.
Oregon: Rev. Stat.	125.080 On petition or motion if respondent objects	<i>Not stated</i>	125.080 May appear in person or by counsel	<i>Not stated</i>	125.305 Clear & convincing	125.300 As necessary to promote and protect well-being of protected person	125.305
Pennsylvania: Cons. Stat. Ann.	20-5511(a)	20-5511(a) May be held at residence	20-5511(a) Shall be present unless would harm proposed ward or out of state	20-5511(a) If requested	20-5511(a) Clear & convincing	<i>Not stated</i>	20-5502

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Rhode Island: Gen. Laws	33-15-5 Before probate judge of city where petition was filed	<i>Not stated</i>	33-15-5(1) Right to be present	<i>Not stated</i>	33-15-5(3) Clear & convincing	33-15-4 Not appoint if needs can be met with least restrictive alternative	33-15-4 Guardian makes decisions only in areas where person lacks capacity
South Carolina: Code Ann.	62-5-407(b) Upon receipt of petition, shall set date	<i>Not stated</i>	62-5-303(b) Entitled to be present	<i>Not stated</i>	62-5-304(B) If court satisfied that appointment necessary	62-5-304(A) Only to extent necessitated by mental and adaptive limitations	62-5-416 62-5-312
South Dakota: Codified Laws Ann.	29A-5-308 Within 60 days of filing and at least 14 days before hearing	29A-5-312 Convenient place as court determines	29A-5-312 Shall attend except for good cause	29A-5-308 Entitled to demand jury trial	29A-5-312 Clear & convincing	29A-5-312 Extent necessary to prevent neglect, abuse, or exploitation	29A-5-312
Tennessee: Code Ann.	34-3-106 Right to a hearing 34-1-108 More than 7, but less than 60 days after notice to respondent or GAL	<i>Not stated</i>	34-3-106(4) Right to attend	<i>Not stated</i>	34-1-126 Clear & convincing	34-1-127 Affirmative duty to impose least restrictive	34-3-107 Shall enumerate powers removed, retains all other powers

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Texas: Prob. Code Ann.	685	652 May be held at any suitable location not likely to have harmful effect on respondent	685 Must be present unless ct deems not necessary on the record	643 Entitled on request in contested proceeding 685 Entitled on request	684 Clear & convincing	684 person is incapacitated, that in best interest to appoint G, and that rights or property be protected by appointing a guardian	693 May appoint full guardian if unable to care for self, manage property, vote, operate motor vehicle 693(b) If lacks capacity in some but not all areas, grant limited powers and permit respondent to care for self or manage property according to ability
Utah: Code Ann.	75-5-302	<i>Not stated</i>	75-5-303(4) Shall be present	75-5-303(4)	<i>Not stated</i>	75-5-304 Necessary or desirable	75-5-304(2) Limited guardian preferred
Vermont: Stat. Ann. tit. 14	14-3068	14-3068(b) Setting not likely to have harmful effect on mental and physical health	14-3068(a) may attend	<i>Not stated</i>	14-3068(f) Clear & convincing	14-3068(f) Respondent is in need of guardianship	14-3069
Virginia: Code Ann.	37.2-1004(A) Promptly set time and date	37.2-1007 Convenient place	37.2-1007 Entitled to be present	37.2-1007 Entitled upon request	37.2-1007 Clear & convincing	37.2-1007 Extent necessary for protection; ct. consider listed factors	37.2-1009 Nature and extent of powers
Washington: Rev. Code Ann.	11.88.030 Within 60 days of petition	11.88.040(4) May remove to place of residence	11.88.040(4) Shall be present	11.88.045(3)	11.88.045(3) Clear & convincing	11.88.005 Minimum extent necessary	11.88.010(2)

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West Virginia: Code	44A-2-9(a)	44A-2-9(b) At convenient place	44A-2-9(c) Shall not proceed without good cause affidavit	44A-2-9(c) Not entitled	44A-2-9 Clear & convincing	44A-2-10(c) Not beyond what is absolutely necessary	44A-2-11
Wisconsin: Stat. Ann.	54.44	54.42(6) Shall hold at place person may attend 54.44(3) By telephone	54.42(5) 54.44(3) 54.38(2)(a) Petitioner shall ensure attends unless GAL specifies reasons in writing	54.42(2) If demanded	54.10(3)(a) 54.44(2) Clear & convincing	54.46(1)(a) Find if incompetent or spendthrift, advance planning renders unnecessary	54.18 Only exercise powers as authorized by order; granted powers are necessary and are LRA
Wyoming: Stat.	3-1-205	<i>Not stated</i>	3-1-205 Be present at any hearing	3-2-103 May demand jury trial	3-2-104(a) Preponderance	3-2-104(b) Order states reasons guardian needed	3-1-206 Least restrictive & most appropriate order

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