



Guardianships and Conservatorships: Addressing Backlog and New Filings

A Pandemic Resource from NCSC

December 14, 2020 | Version 2.0

Expected Impacts of the Pandemic on Guardianships and Conservatorships

The number of new filings in guardianship and conservatorship cases dropped in most jurisdictions with the onset of the pandemic. However, families stressed by social isolation, unemployment, and food insecurity may increase the risk of elder abuse and fraud. Existing cases may have had hearings postponed. Emergencies involving a vulnerable individual must be a top priority in a court's triage efforts.

Some emergencies that have arisen include:

- A protected person with a severe case of COVID-19 was offered plasma treatment, which was considered experimental. The guardian needed a court order to approve the treatment.
- Nursing homes in some areas have attempted to [capture the stimulus payments](#) of their residents.
- A guardian has an urgent need to visit a client in a closed facility.

Guardians and conservators are also concerned that [hospitals may activate "do not resuscitate" policies](#) for some patients when they have more patients than they can treat. HHS issued [a bulletin on COVID-19, civil rights, and HIPAA](#).

Proven Case Management Methods

In the face of public crisis, applying the core tenets of caseload management as described in the [Children, Family, and Elders Overview](#) will provide a framework for preventing and addressing case backlog. The [Center for Elders and the Courts](#) provides extensive information for courts regarding guardianships and conservatorships and may provide additional ideas for innovations the court may adopt.

Challenges for Guardians and Conservators

- In-person visitation has not been allowed at most nursing homes and congregate care settings based on federal guidance. Some guardians and conservators have been continuing contact through video chat, visits through a window, and by talking with facility staff.
- Obtaining medical evaluations and competency examinations have been limited to telemedicine.
- Guardians and conservators in some areas are unsure if they are still required to submit well-being and accounting reports, particularly if hearings are delayed.

What Can Courts Do?

1. Communicate clearly, through the court's website or more direct means, at least the following:

- How to request an emergency hearing
- The necessity of maintaining contact with the protected person and submitting well-being reports and periodic accountings
- How and when court hearings regarding guardianships and conservatorships are being held
- Whether any special reports (see below) are requested/required
- What to do if the person can no longer serve as guardian/conservator due to illness or other reasons

- Some states provide for the court's appointment of a "stand-by" guardian to step in. For example, see the [Florida statutory provision](#), [Indiana's provision](#), or [Maine's provision](#) for appointing a successor or stand-by guardian.

2. Assign staff members to review well-being and accounting reports to free the judge for other matters. Monitor for "[red flags](#)."

3. In addition to regular reports, courts may want to ask guardians/conservators to conduct an immediate well-being assessment of each client's circumstances, including the following:

- Current living arrangement

- Stability of living arrangement
 - Health risks due to COVID-19 in current living arrangement, including to any caregivers
 - Plans for a backup guardian in case the current guardian becomes ill or otherwise unable to fill that role
 - Current contact information for the guardian or conservator, the protected person, and the backup or stand-by guardian
 - Continuing availability of necessary in-home services when applicable
 - Appropriateness of current services or need for services
 - Education continuity and enrichment for children with guardianships who are currently out of school
4. Implement a reminder or tickler systems for review dates.

Challenges for Virtual Hearings in Conservatorships and Guardianships

A person who has a guardian or conservator may have difficulty communicating through videoconferencing or by phone, particularly if the person has hearing or vision loss, physical impairments, dementia, unfamiliarity with technology, and an unstable Internet connection. In these situations, someone will need to help the guardian or conservator participate. Including another person may compromise confidentiality and prevent the individual from responding honestly to questions. Additionally, the court must be alert to

individuals in the room, coaching a witness or exerting undue influence. It may be helpful to leave the person who is subject to the petition unmuted during a hearing for this reason.

The Alzheimer's association has [tips for communicating](#) with people with dementia.

Court Practices

- **Wayne County (MI)** created a Probate Response Team at the beginning of the crisis. This team developed the [processes and procedures](#) to triage cases, prioritizing mental health, and emergency filings. They eliminated the use of paper documents in most of their workflow and coordinated judges' schedules to have all hearings conducted remotely with staggered docket

start times. The court already had a well-developed tickler system by which notices of accountings and reports due are automatically sent to all conservators and guardians prior to the due date, and the court is notified if they are missing or late. They also updated their website with pandemic-related information.

- Probate Judge Irv Condon of **Charleston County (SC)** is conducting [Zoom Town Halls](#) to answer questions from the public.
- The **Minnesota** court system does an excellent job of [providing information](#) to guardians and conservators.

