

WHAT IS A “LEGALLY AUTHORIZED REPRESENTATIVE” IN MENTAL HEALTH CARE

Legally Authorized Representatives (LARs) are individuals or entities who have the legal authority to make decisions on behalf of someone who is unable to make those decisions for themselves due to mental illness or incapacity.

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LEGALLY AUTHORIZED REPRESENTATIVES: PRIMARY FORMS

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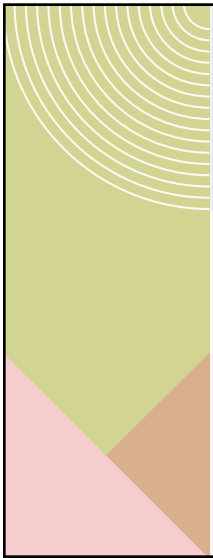
Guardianship of the person

Created by a court to be responsible for decision-making for someone else

Medical power of attorney

Allows a person to give someone else the right to make decisions about their medical care on their behalf

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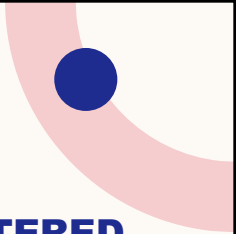
OTHER OPTIONS TO INFORM PSYCHIATRIC CARE, ENGAGE CAREGIVERS, AND EMPOWER PATIENTS

- Psychiatric advance directives
- Supported Decision Making Agreements
- Representative payee to manage disability benefits
- Special needs trusts

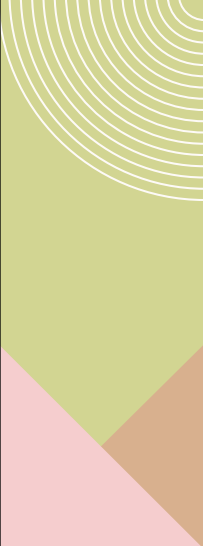
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PERSON-CENTERED AND FAMILY-CENTERED CARE



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PERSON-CENTERED AND FAMILY-CENTERED CARE

- Person-centered care is aligned with requirements of Section 2402(a) of the ACA
- Defines person-centered planning as a process directed by the person with service needs which identifies recovery goals, objectives and strategies.
- May include a representative whom the person has freely chosen, or who is otherwise authorized to make personal or health decisions for the person.
- Family-centered care is “an approach to the planning, delivery, and evaluation of health care whose cornerstone is active participation between families and professionals.”

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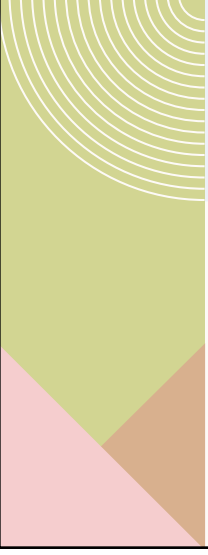


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CRITERIA 4.B.1

- “The CCBHC ensures all CCBHC services... reflect person-centered and family-centered, recovery-oriented care; being respectful of the needs, preferences, and values of the person receiving services; and ensuring both involvement of the person receiving services and self-direction of services received.”

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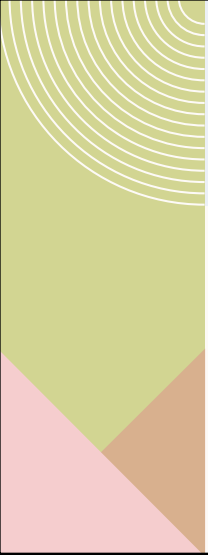


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CRITERIA 4.B.2

- “Person-centered and family-centered care is responsive to the race, ethnicity, sexual orientation and gender identity of the person receiving services and includes care which recognizes the particular cultural and other needs of the individual.”

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CRITERIA 4.E: PERSON-CENTERED AND FAMILY-CENTERED TREATMENT PLANNING

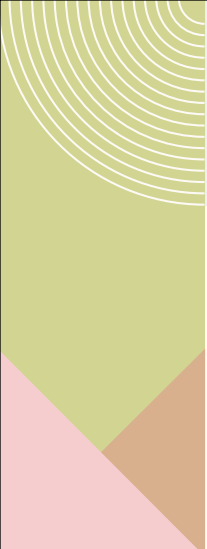
- Individualized treatment plan based on information obtained through comprehensive evaluation and the person receiving services' goals and preferences.
- The plan shall address the person's prevention, medical, and behavioral health needs.
- The plan shall be developed in collaboration with and be endorsed by the person receiving services; their family (to the extent the person receiving services so wishes); and family/caregivers of youth and children or legal guardians.

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**PERSON-CENTERED
AND FAMILY-
CENTERED CARE IN
THE CONTEXT OF
LEGALLY
AUTHORIZED
REPRESENTATIVES**

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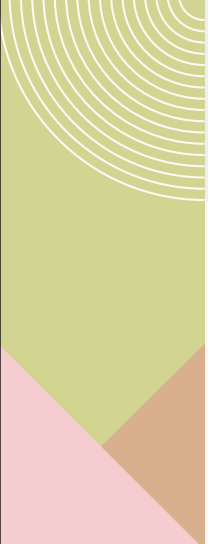


CRITERIA 2.C.3

- Individuals who are served by the CCBHC are educated about crisis planning, psychiatric advanced directives, and how to access crisis services..... Please see 3.a.4. for further information on crisis planning.”

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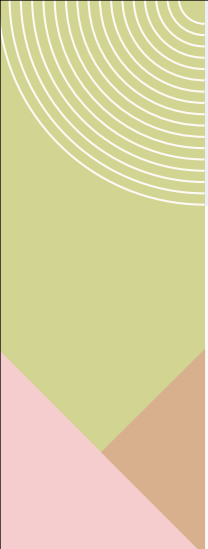


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CRITERIA 3.A.4

- “The CCBHC shall coordinate care in keeping with the preferences of the person receiving services and their care needs. To the extent possible, care coordination should be provided, as appropriate, in collaboration with the family/caregiver of the person receiving services and other supports identified by the person..... Crisis plans may support the development of a Psychiatric Advanced Directive, if desired by the person receiving services. Psychiatric Advance Directives, if developed, are entered in the electronic health record of the person receiving services so that the information is available to providers in emergency care settings where those electronic health records are accessible.”

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CRITERIA 4.E.7

- “The person’s health record documents any advance directives related to treatment and crisis planning. If the person receiving services does not wish to share their preferences, that decision is documented. Please see 3.a.4., requiring the development of a crisis plan with each person receiving services.”

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UNDERSTANDING THE MENTAL ILLNESS EXPERIENCE (TO INFORM CONSTRUCTIVE LAR RELATIONSHIPS + FACILITATE PERSON-AND-FAMILY CENTERED CARE)

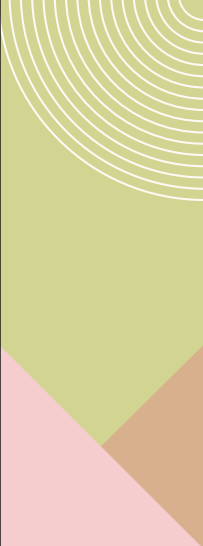
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UNDERSTANDING THE EXPERIENCE OF MENTAL ILLNESS

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- Takeaway #1:
Mental illness is no one's fault


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UNDERSTANDING THE EXPERIENCE OF MENTAL ILLNESS 17

- Takeaway #2: The emergence of mental illness is a catastrophic stressor

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UNDERSTANDING THE EXPERIENCE OF MENTAL ILLNESS 18

- Takeaway #3: A full view of a person with a condition must include their biological, psychological and social dimensions

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UNDERSTANDING THE EXPERIENCE OF MENTAL ILLNESS: COLLABORATIVE MODEL OF CARE

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ENGAGEMENT: A NEW STANDARD OF MENTAL HEALTH CARE

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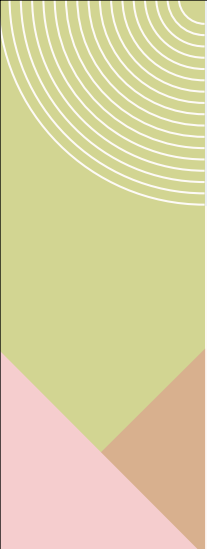
- Engagement is the strengths-based process through which individuals with mental health conditions form a healing connection with people that support their recovery and wellness within the context of family, culture and community.

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**COLLABORATIVE
MODEL OF CARE AND
ENGAGEMENT IN THE
T-CCBHC
FRAMEWORK**


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**CRITERIA 3.D: CARE TREATMENT
TEAM, TREATMENT PLANNING,
AND CARE COORDINATION
ACTIVITIES** ²²

- “The CCBHC treatment team includes the person receiving services and their family/caregivers, to the extent the person receiving services desires their involvement or when they are legal guardians, and any other people the person receiving services desires to be involved in their care...”

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CRITERIA 3.D: CARE TREATMENT TEAM, TREATMENT PLANNING, AND CARE COORDINATION ACTIVITIES

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- “The CCBHC designates an interdisciplinary treatment team that is responsible, with the person receiving services and their family/caregivers, to the extent the person receiving services desires their involvement or when they are legal guardians, for directing, coordinating, and managing care and services. The interdisciplinary team is composed of individuals who work together to coordinate the medical, psychiatric, psychosocial, emotional, therapeutic, and recovery support needs of the people receiving services...”

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KNOWING GUARDIANSHIP – AND THE ALTERNATIVES TO IT



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WHAT IS GUARDIANSHIP?

- Some people may need a guardian if they are unable to make decisions, care for themselves, or manage personal or financial affairs due to a mental or physical disability.
- Guardianship is a legal relationship where an individual (the guardian) is appointed by a court to make decisions and manage the personal and financial affairs of an incapacitated person (the ward). The guardian is typically responsible for ensuring the well-being and best interest of the person.
- Guardianship takes away a person's rights. Before filing a guardianship application, other options are usually tried first...

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GUARDIANSHIP ALTERNATIVE: PSYCHIATRIC ADVANCE DIRECTIVE (PAD)

- Allows a person to make decisions in advance about mental health treatment
- Specifically, three types of mental health treatment: psychoactive medication, convulsive therapy and emergency mental health treatment
- PAD will be followed only if a court believes that the person incapacitated to make treatment decisions
- Effective only for 3 years from date it is signed (unless person becomes incompetent, in which case it remains effective for as long as person is incompetent)
- Also known as a Declaration for Mental Health Treatment
- Authorized in Texas Civil Practice and Remedies Code, Chapter 137

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GETTING STARTED WITH A PSYCHIATRIC ADVANCE DIRECTIVE 27

Where do I start?

1. Ask someone you trust to help.
2. Find 2 witnesses to sign your PAD.

Witnesses cannot:

- Be under the age of 18
- Be a family member
- Work for your treatment provider

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WHERE TO FIND MORE INFO AND SAMPLE P.A.D.S. 28

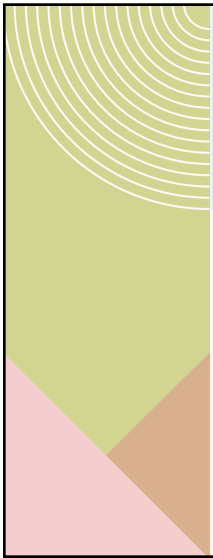
National Resource Center on Psychiatric Advance Directives
www.nrc-pad.org/states/texas

Texas Department of Health and Human Services
bit.ly/DMHTform

Disability Rights Texas
1-800-252-9108
bit.ly/DMHTguide

National Alliance on Mental Illness
bit.ly/namiPAD

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Where to Find Legal Help

You can make a PAD without a lawyer, but a lawyer can help you know your rights and PAD rules.

Texas Rio Grande Legal Aid, Inc.
888-988-9996
www.trla.org

Disability Rights Texas
1-800-252-9108

Texas Legal Services Center
866-979-4343
www.tlsc.org

Capital Area AIDS Legal Project
Legal help for people with HIV/AIDS in Central Texas
512-458-2437
www.asaustin.org

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DISCUSSION: WHAT SHOULD A T-CCBHC DO WITH A P.A.D.?



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GUARDIANSHIP ALTERNATIVE: MEDICAL POWER OF ATTORNEY

- A Medical Power of Attorney (MPOA) is a type of “advance directive” that provides a client a simple way to name someone the client trusts (an agent) to speak to health care providers and make health care decisions for the client (the principal) when they cannot make decisions for themselves.
- Under MPOA, agent cannot make medical decisions until principal’s doctor says that principal can’t make own decisions
- Also known as a Durable Power of Attorney over Medical Affairs
- Authorized in Texas Health and Safety Code, Chapter 166


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DISCUSSION: HOW DOES MEDICAL POWER OF ATTORNEY RELATE TO T- CCBHC PROVISION OF PERSON-AND- FAMILY CENTERED CARE AND TREATMENT PLANNING?



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BRIEF OVERVIEW: OTHER ALTERNATIVES TO GUARDIANSHIP 33

- Supported Decision Making Agreements
- Representative payee to manage disability benefits
- Special needs trusts
- What else?

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WHERE DOES GUARDIANSHIP FIT IN? 34

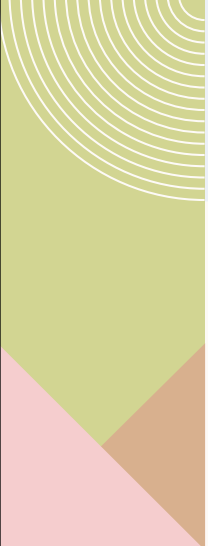


Supports and Services
No Guardianship

Supports and Services &
Limited Guardianship

Full
Guardianship

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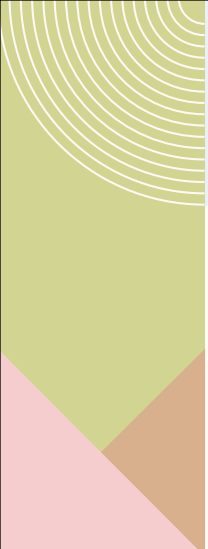


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REMINDER: GUARDIANSHIP DEFINITION

- Guardianship is a judicial proceeding in which a person or entity (a guardian) may be granted full or limited authority over an incapacitated person (a ward) to promote and protect the well-being of the ward and/or the ward's estate.

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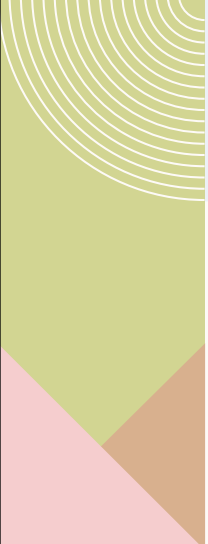


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WHAT IS AN “INCAPACITATED PERSON”

- An incapacity person is a person who
 - 1. is a minor
 - 2. is an adult who, because of a physical or mental condition, is substantially unable to provide food, clothing, or shelter for himself or herself, care for his own physical health, or manage their own financial affairs, or
 - 3. must have a guardian appointed for the person to receive funds due the person from a governmental source.

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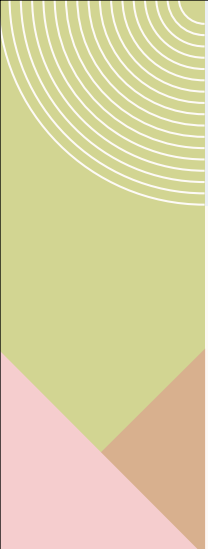


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WHO CAN BE APPOINTED GUARDIAN?

- By law, certain individuals have priority to serve as guardian, such as spouses, adult children, parents and adult siblings.
- Court will often perform a criminal background check on proposal guardian
- Not always a family member

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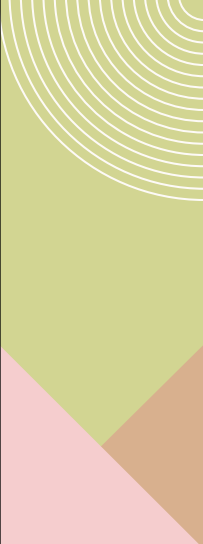


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TEXAS GUARDIANSHIP LAW

- [Texas Estates Code, Chapter 1002](#) This chapter defines many of the legal terms that will be used in other sections of the law about guardianships. Reading this chapter is a good way to get familiar with the terminology of guardianships.
- [Texas Estates Code, Title 3](#): Title 3 of the Estates Code (Chapters 1001 – 1357) concerns guardianships in Texas. Because there is so much to this section of the law, we will not cover it in great detail.

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UNDERSTANDING TEXAS GUARDIANSHIP LAW

- [A Texas Guide to Adult Guardianship](#): This guide from the Texas Health and Human Services Commission explains guardianships, the responsibilities and limitations of guardianships, and offers alternatives to guardianships in easy-to-understand language.
- [What is Guardianship?](#): Texas Health and Human Services provides a basic explanation of what a guardianship does and how its agency may get involved.
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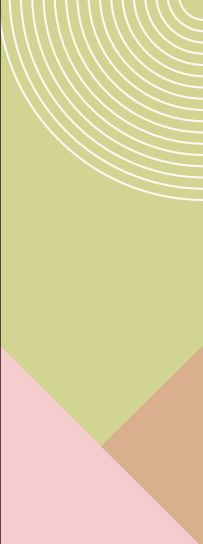


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TYPES OF GUARDIANSHIP

- [Guardianship of the person](#): has control over the ward's personal matters, such as housing, medical, and educational decisions.
- [Guardianship of the estate](#): has control over the ward's property and finances.

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MORE ABOUT GUARDIANSHIP OF THE PERSON

- A full guardian of the person has the legal right and responsibility to make all personal decisions for the ward.
- The guardian decides
 - Where the ward will live
 - Whether to limit contact with family and friends
 - What medical or psychological treatment the ward will receive
 - Where the ward can go
 - What personal rights the ward will have (e.g. drive a car, have a cell phone, date) within the limitations of the court order.

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HOW IS A GUARDIANSHIP CREATED?

- A guardianship must be created by the court through a formal appointment process.
- In larger counties, the proceedings will be initiated in the Probate Court.
- For smaller counties that do not have a probate court, the County Court or County Court at Law will be the appropriate court.
- Texas Estates Code, Chapter 1101: This chapter outlines the procedure where an individual requests that a guardian be appointed for an incapacitated person.
- Texas Estates Code, Chapter 1102: This chapter outlines the procedure where the court begins the process of appointing a guardian for an incapacitated person.

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WARD'S BILL OF RIGHTS

- Section 1151.351 of Texas Estates Code lists rights guaranteed to a ward who is subject to a guardianship
 - To have a copy of the court orders that created their guardianship
 - To be informed of the contact information for several organizations and agencies where they can file complaints against their guardian or report abuse
 - To vote, marry, and obtain a driver's license unless specifically restricted by the court
 - To have private visits with people of their choice, unless the guardian finds that these visits will harm their ward
 - To be treated with respect and dignity

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GUARDIANSHIP IS COMPLEX!

- Guardianship is not easy, quick, or inexpensive.
- Requires services of a licensed attorney.
- High probability of resentment or anger from proposed ward
- Court will require Certificate of Medical examination. Judge may order person to see a licensed physician, who will answer specific questions about the person's mental and physical capabilities.
- Once a guardian is appointed, there are ongoing legal requirements which may require the assistance of attorney.
- A guardian must file annual reports or accountings with a court depending on the type of guardianship.

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GUARDIANSHIP PROS AND CONS

Pro: Guardianship protects vulnerable people.

Con:



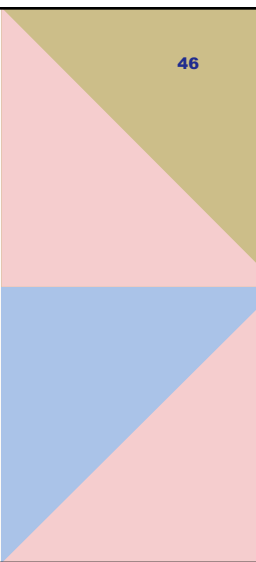
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GUARDIANSHIP PROS AND CONS

Pro:

Con: Wards can lose many or most of their basic rights, depending on the type of guardianship established.



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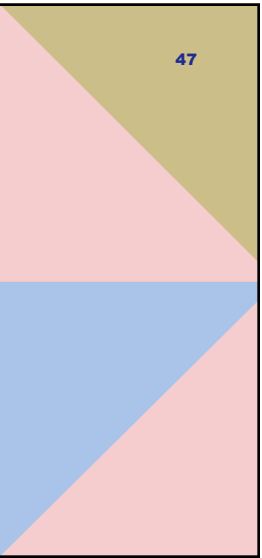
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GUARDIANSHIP PROS AND CONS

Pro: Guardians advocate for their wards, including:

- Where they will live
- Medical treatments they will receive
- Who has access to the ward

Con:



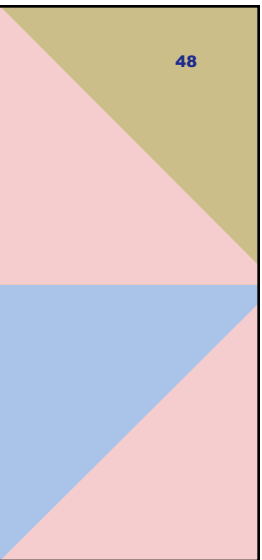
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GUARDIANSHIP PROS AND CONS

Pro: Guardianship is a legal process, requiring the services of an attorney, which is designed to provide maximum protection to the person.

Con:



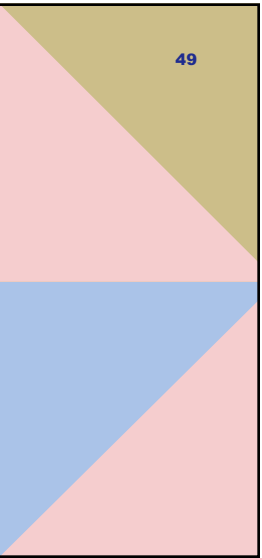
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GUARDIANSHIP PROS AND CONS

Pro: A proposed ward must be examined by a physician who gives the courts a Certificate of Medical Examination addressing alleged incapacity

Con:



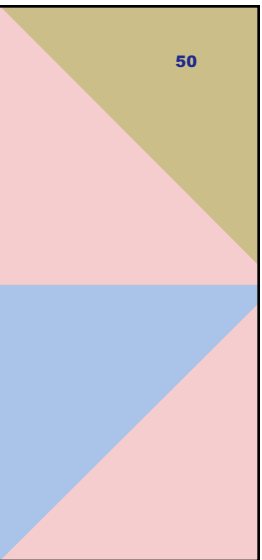
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GUARDIANSHIP PROS AND CONS

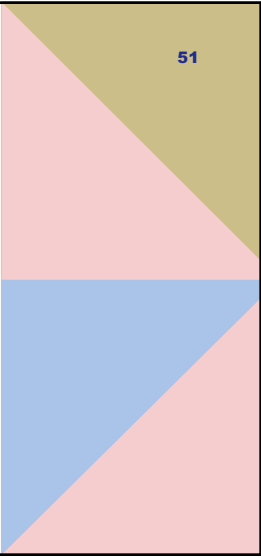
Pro: The letters of guardianship expire if they are not renewed annually.

Con:



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GUARDIANSHIP PROS AND CONS

Pro: Terminating or modifying a guardianship is a legal process requiring the services of an attorney involving a court hearing and requiring enough evidence to show that the changes are best for the ward.

Con:

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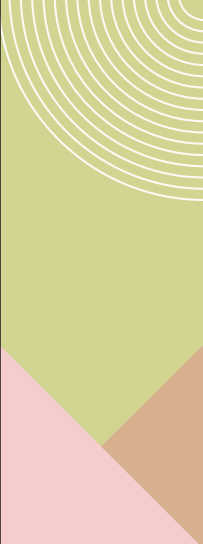


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HHSC GUARDIANSHIP SERVICES PROGRAM

- Referrals from APS or CPS
- In limited circumstances, courts may make direct request to this program
- Person must be either
 - An adult with a disability
 - 65 or older and a victim of abuse, neglect, or exploitation
- Minors in CPS conservatorship who appear to meet adult definition of incapacity

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GUARDIAN SITUATIONS, QUESTIONS, AND ANSWERS

“ My sister keeps taking drugs and making horrible choices. She has been arrested several times. I am thinking about applying to become her guardian so I can control her money and her choice of companions. What type of guardianship should I seek?”

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GUARDIAN SITUATIONS, QUESTIONS, AND ANSWERS

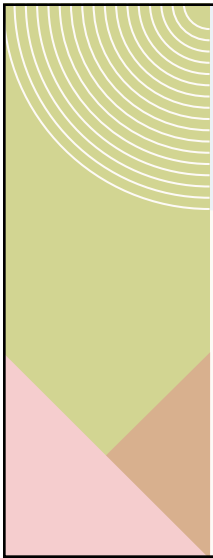
“My mother has schizophrenia and is off her medication. She needs to be committed to a state hospital. If I become her guardian, can I commit her for treatment?”

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GUARDIAN SITUATIONS, QUESTIONS, AND ANSWERS

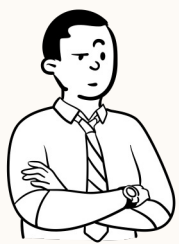
“My father is not taking care of himself. He refuses to bathe or shave and is living in filthy conditions. I am also worried about some of his new companions. What does it take to have someone declared incapacitated?”



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DISCUSSION: HOW DOES GUARDIANSHIP OF THE PERSON RELATE TO T-CCBHC PROVISION OF PERSON-AND-FAMILY CENTERED CARE AND TREATMENT PLANNING?



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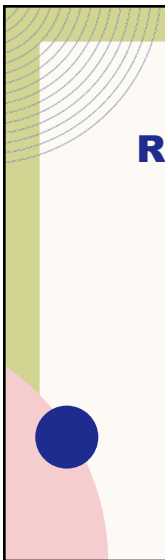


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GUARDIANSHIP RESOURCES

- State Bar of Texas Guardianship Guide
- Texas Guardianship Association
- National Guardianship Association
- Center for Guardianship Certification
- Area Agencies on Aging
- Disability Rights Texas
- Arc of Texas
- NAMI Texas
- Legal services (list)

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REVIEW: KEY TAKEAWAYS

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