

Probate Court I - Guardianship

In South Carolina, the Probate Court determines capacity, or lack thereof, of an adult. Incapacity means the inability to effectively receive, evaluate, and respond to information or make or communicate decisions such that a person, even with appropriate, reasonably available support and assistance, who cannot meet the essential requirements for his physical health, safety, or self-care, necessitating the need for a guardian. See S.C. Code Ann. §62-5-101 at <http://scstatehouse.gov/code/t62c005.php>. A person with poor judgment has the ability to make responsible decisions, but chooses not to do so.

What services does the program provide?

In South Carolina, a guardian is a person, institution, or agency appointed by the Probate Court to handle personal matters for a ward (person who is appointed a guardian). The Probate Court will not appoint a guardian unless it receives clear and convincing evidence, in a court hearing, that an individual is incapacitated and that the person applying to be guardian is the appropriate person to serve as a guardian. The primary responsibilities of a guardian are to decide where the ward will live and make provisions for the ward's care, comfort, and maintenance, including medical and health care decisions. The court-appointed guardian must file a written report with the Probate Court at least once a year.

Who is eligible for services?

- An adult who is unable to make health care decisions or take or direct proper care of himself or herself.
- An adult who does not have a healthcare power of attorney and needs someone to make health care decisions.
- An adult who is dying and does not have a living will or healthcare power of attorney, or whose family cannot agree as to appropriate end of life decisions.
- An adult whose health care providers (nursing homes, hospitals) are not honoring a healthcare power of attorney
- An adult who needs services in the home and is unable to arrange for them on his or her own.
- An adult who is in a facility and needs an advocate to make sure his or her needs are met.

Some important things to know about this program:

- If a family member/friend is not available to serve as a guardian, a third party guardian will be appointed. There is no public guardianship program in South Carolina, therefore third party services are private pay
- SCDSS may file the petition for probate court or a contract attorney may be hired to file the petition.
- SCDSS cannot serve as the vulnerable adult's guardian.

Where can I go for more information?

South Carolina Legislation - <https://www.scstatehouse.gov/code/t62c005.php>

SC Courts - <https://www.sccourts.org/selfhelp/FAQsFromACaregiver.pdf>

APS Program Policy – Probate Court - <https://dss.sc.gov/media/2766/5-aps-probate-policy-final-4-21-21.pdf>

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