DEVELOPMENTAL DISABILITIES ADMINISTRATION

GUARDIANSHIP AND DURABLE POWER OF ATTORNEY
Frequently Asked Questions (FAQ)

GUARDIANSHIP

Question:
What type of guardianship gives the authority to approve and sign for DDA services?

Answer:
If a guardianship is "Full Guardianship" or "Full Guardianship of Person", then the guardian typically has authority to approve and sign for DDA services. The document from the court entitled "Order Appointing Guardian" will state the scope of the guardian's authority and what rights a person subject to guardianship retains or loses. If it is a Limited Guardianship, then it must include the authority to be the guardian of the person. Keep in mind that each guardianship is unique and the rights a person retains or loses may vary, whether it is a full guardianship and depending on the language in the court order.

For example: In WA, a conservatorship (formerly called "guardian of estate") gives the guardian authority over the client's money, resources, and property. If a person has a conservator only who is not also guardian of the person, then the conservator would not have sufficient authority to consent for most DDA services. (See below about guardianship terminology used in other states)

Question:
What guardianship documents should I ask a guardian to provide? What records do I need to have in the client file?

Answer:
You should ask the guardian to provide the Order Appointing Guardian and the current Letters of Guardianship. Both should be kept in the Legal section of the client file. Both documents should be signed, and Letters of Guardianship may have an expiration date. Staff should follow their regional process to ensure that guardianship documents are sent to the Hub Imaging Unit (HIU) for scanning into Barcode. See MB D21-018 for details.

Question:
If someone claims to be the client's guardian, will the DDA Case Resource Manager accept the verbal assertion and document it in the DDA Assessment?

Answer:
No. If the client has a guardian, then DDA requires copies of the Order Appointing Guardian and the current Letters of Guardianship to verify the guardian's court appointed authority. Once copies are received, the guardian should be listed in the DDA Assessment Collateral Contacts with the role of "Guardian" and DDA is able to move forward with obtaining the guardian's consent for the provision of the client's services.

Question:
Do the parents of a DDA client automatically become the guardian after their son or daughter turns 18?

Answer:
No. A person is considered "emancipated" at 18 and can legally make all their own decisions. The parents would need to file for guardianship of an adult should the person need this type of decision maker. It is important to start this process well before the person turns 18, as it may take several months to complete the process.

Question:
Is a court approved guardianship in effect for as long as the person wants to continue acting as the guardian?

Answer:
If a guardian meets the expectations of the court, there is no temporary emergency guardianship in place, and no third party has petitioned the court to terminate the guardianship (i.e., the person can make their own decisions), the guardianship will remain in effect. Adult guardianships are usually established permanently and can only be modified or terminated by a court order. Once a guardianship is established, the adult subject to guardianship may lose many legal rights and may lack the legal authority to sign his or her own contracts, agree to a plan of care, etc. Guardianship should be periodically reviewed by the court, typically on an annual, triennial, or other period set out in the Order Appointing Guardian.

Here is some basic information about current guardianship law:

- Guardians do not have court authority to act without current Letters of Guardianship. If Letters expire, the guardianship remains in effect, but the guardian loses the authority to act. Additionally, the person subject to guardianship does not automatically have their rights restored unless restored by the court.

- The Letters of Guardianship should state the type of guardianship (i.e., limited or full, co-guardianship), the date the guardian was appointed by the court, and the date the Letters expire (and the guardian's authority to act expires); and

- Letters of Guardianship issued after July 1, 2011, should be issued with a five-year expiration date unless a court states otherwise.

Note: Letters of Guardianship issued **prior** to July 1, 2011, may not have expiration dates or reporting requirements. These will continue to be valid unless a subsequent action has been taken by the court that may affect the guardianship. However, courts have now established that guardianships should be periodically reviewed by the court, and these long-term guardians should be encouraged to contact the court to update their records, at which time new Letters of Guardianship may be issued with a 5-year expiration date and new reporting requirements. If you have questions about a guardianship, you should contact your regional guardianship coordinator for assistance.

Question:
Is a guardianship that was established in another state valid in Washington State?

Answer:
Yes, provided that the guardianship is still active in the state in which it was issued, and the guardian maintains current authority and good standing with the out-of-state court. The out-of-state court may have different laws, and use effective dates and terminology differently than WA, so you should contact your regional guardianship coordinator with questions. Guardians should

be encouraged to transfer the guardianship to the state and county in which the person subject to guardianship resides, and some states may have laws **requiring** that the guardianship be transferred to the state where the adult subject to guardianship resides.

Note: In some other states and now in WA, the term "conservator" is used instead of "guardian of estate". When "conservator" is used in place of "guardian of estate", it does not give the guardian authority to sign for most DDA services. However, some states use the term "conservator" instead of "guardian." If a person is appointed conservator or guardian by an out-of-state court, you must follow the same basic guidelines described in this FAQ document and obtain copies of the Order Appointing Guardian, Letters of Guardianship, or the state-specific court documents that describe the nature of the guardianship or conservatorship.

Question:
What do I do if the person who claims to be the guardian refuses to provide the court documentation?

Answer:
Do one or more of the following:

- Explain that DDA is legally required to verify guardianship status before allowing someone other than the client to consent to services, and without the court documentation DDA will not be able to accept a guardian's consent and may not be able to provide services. Mail DSHS Form 16-213, *Verification of Legal Status*, to the person's guardian.

- The case manager must document all the efforts to receive a copy of the guardianship documents in a client's SER.

- Discuss this with your supervisor and with the regional guardianship coordinator. The refusal of a guardian to cooperate may place client services in jeopardy.

Question:
Is there a public website available to search for Washington State guardianship records?

Answer:
Some guardianship filing information may be found on the Washington Courts website. However, the website information is not adequate for proof of guardianship. The copy of the guardianship court orders and letters of guardianship must be received from the guardian.

Question:
Where do I file the guardianship documentation in the client's file?

Answer:
This is a legal document and must be filed in the Legal Section of the client file. Please follow your regional process to ensure Orders Appointing Guardian and Letters of Guardianship are sent to the HIU for electronic uploading into Barcode. See MB D21-018 for details.

Note: If there is any question about whether the client has the capacity to understand service decisions or manage their basic affairs (even though there is a designated NSA), if there is not a guardianship in place you should contact the regional guardianship coordinator. Follow WAC 388-845-3056, *What if I need assistance to understand my plan of care or individual support plan?*

and WAC 388-845-3070**,** *What happens if I do not sign or verbally consent to my individual support plan (ISP)?*

Question:
Where do I get more information about guardianship?

Answer:
Washington Law Help has online resources that can help you better understand DPOA, guardianship, and alternatives to guardianship:
https://www.washingtonlawhelp.org/issues/aging-elder-law/guardianships-powers-of-attorney-2
https://www.washingtonlawhelp.org/resource/questions-and-answers-on-powers-of-attorney

DURABLE POWER Of ATTORNEY (DPOA)

Question:
Does a Durable Power of Attorney (DPOA) have the same authority as a guardian?

Answer:
Not necessarily. While they may be similar in some ways, a guardianship is often broader than a DPOA, and in a guardianship proceeding a person is determined incapacitated by a court and may have many rights taken away.

Question:
Is a DPOA established in court?

Answer:
Not necessarily, but a court may be involved in the process and sometimes supports a person to create a DPOA as a less restrictive alternative to guardianship. Unlike guardianship, which is established by a court because a person is determined to be "incapacitated", a DPOA is an agreement between a "competent person" (aka, "principal") and another person (aka, "agent"). The principal has given specific decision-making authority under specific circumstances to their agent which may go into effect immediately or if the principal becomes incapacitated.

Deeming someone as incapacitated is a different process for guardianship and DPOA. In guardianships, incapacity is a legal process always determined by a court, but for the purposes of DPOA, incapacity might be determined by doctors, psychologists, a judge, or other person that the client nominates.

Note: A person who is already determined to be incapacitated may not give DPOA authority to another. If the person is already incapacitated then a guardianship would be needed. If you have any question about the need for a guardianship versus a DPOA for an individual, you and your supervisor should contact the regional guardianship coordinator for a consultation.

Question:
May a DPOA be used as a substitute for a guardianship?

Answer:

If DPOA is a less restrictive alternative to guardianship chosen by a person, it may serve a similar purpose. However, if a person does not have the capacity to understand the rights they would be granting to their "agent" through DPOA, they may require a guardian and they cannot give initiate a DPOA.

Question:
What should a DPOA include to grant someone the legal authority to sign for a client's DDA services?

Answer:
It must be a Durable Power of Attorney for **healthcare decisions**. Other authority granted to a person's agent through DPOA may not be acceptable for this purpose. For example, a DPOA for financial decisions does not give the proper authority to consent for DDA services, unless the only DDA services a person receives are financial in nature, such as clients whose only service is the State Supplementary Payment.

Question:
Does a DPOA have a specific time limit for review like a guardianship?

Answer:
Typically, a DPOA does not have an expiration date and does not need to be reviewed, but it could state an expiration date and may identify specific criteria about when it is or is not in effect. The details in each DPOA may be unique and they should be reviewed to determine what they entail before proceeding. Contact your regional guardianship coordinator or AAG's office for support if needed.

Question:
If someone claims to be the client's DPOA, will the DDA Case Resource Manager accept the verbal assertion and document it in the DDA Assessment?

Answer:
No. If the client does not have a guardian but does have a DPOA for healthcare decisions, then to obtain consent from the person's agent and to provide DDA services, DDA requires a copy of the DPOA agreement in Legal section of the client's file. It must be lawfully executed under WA State law defined in RCW 11.125, including the signature and witness requirements described in RCW 11.125.050.

Note: *If you receive a DPOA document and in your professional judgment you question the client's ability to understand what rights they may have given to person through a DPOA, you and your supervisor should consult with your regional guardianship coordinator.*

Once valid documentation has been obtained, the agent identified with DPOA for healthcare decisions may be listed in the DDA Assessment Collateral Contacts with the role of "Durable Power of Atty/Healthcare." This identifies the agent as having the right to sign for the client's DDA services.

Question:
Does a DPOA go into effect immediately upon the signature/date of the client?

Answer:

The AAG's office has determined the assumption is that DDA clients who have agreed to a DPOA intend to have the agreement go into effect immediately. This means the DPOA for healthcare decisions may sign for services. However, unless the client who has established a DPOA has subsequently become incapacitated (is still "competent"), the client also retains their right to consent for services.

If the DPOA agreement specifically gives a future date or a "trigger" event before it goes into effect then you must follow that directive.

For example: A DPOA was just established by a 45-year-old client who can make his own decisions. The client has a family history of strokes after the age of 50. The DPOA nominates his sister as his agent, and it states it will go into effect when the client turns 50 years old or if he has a debilitating stroke, whichever comes first. The client also nominated his personal physician to decide of his capacity after a stroke. In this case, the client was looking ahead and preparing for the day he would require the assistance of a DPOA.

Question:
Can you have a guardian and a DPOA that are two different people?
Yes. Under the new Uniform Guardianship Act for adults which went into effect 1/1/22, a person may continue to have a valid DPOA while subject to a guardianship, unless the court orders otherwise.

Question:
What happens if a person and their agent in a DPOA disagree?
If a person has not been determined incapacitated by the entities identified in the DPOA, such as their personal physician, they still retain the right to make their own decisions and their wishes should be taken as primary. If a person is determined incapacitated as described in the DPOA, then the agent could execute the rights granted to them. However, the agent should make the decision the person would make if they were able, in accordance with their known wishes.

Question:
What happens if someone wants a different agent, or the agent is unwilling or unable to act?
A DPOA can be terminated as described in RCW 11.125.100. A person's agent can refuse to act and is not obligated to perform as agent, whereas a guardian is obligated by a court to act.

Question:
Is a DPOA that was established in another state valid in Washington State?
Answer:
Yes, assuming it was lawfully executed under that state's law. If you have questions about the legality of a DPOA from another state, contact your regional guardianship coordinator.

Question:
What do I do if the person who claims to be the DPOA for healthcare decisions refuses to provide the documentation?

Answer:
Do one or more of the following:

- Explain that DDA is legally required to obtain proof of legal decision maker status. DDA is required to verify DPOA status before allowing someone other than the client to consent to services. Mail DSHS Form 16-213, *Verification of Legal Status*, to the person.

- Explain that without proof of DPOA for healthcare decisions, DDA would seek consent from the client, unless the person does not have capacity to understand their services. If a person does not have that capacity, then there may be no option for someone to consent.

Note: If there is any question whether the client has the capacity to understand service decisions or manage their basic affairs (even though there is a designated NSA), if there is not a guardianship in place we must contact the regional guardianship coordinator. Follow WAC 388-845-3056, *What if I need assistance to understand my plan of care or individual support plan?* and WAC 388-845-3070**,** *What happens if I do not sign or verbally consent to my individual support plan (ISP)?*

The Case Resource Manager must document the efforts to receive a copy of the DPOA in a client's Service Episode Record (SER).

Discuss this with your supervisor and with the AAG's office. The refusal of a DPOA to provide documentation of valid DPOA may place client services in jeopardy.

Question:
Is there a public website available to search for Washington State DPOA records?

Answer:
No. While some DPOAs may be filed with the county record keeping office, there is no way to obtain a copy of the document without a fee, which DDA does not pay. The copy of the agreement must be received from the client, or their agent identified in the DPOA.

Question:
Where do I file the DPOA documentation in the client's file?

Answer:
This is a legal document and must be filed in the Legal Section of the client file.

Question:
Where do I get more information about DPOA?

Answer:
Contact your regional guardianship coordinator or AAG's office. Washington Law Help also has online resources that help understand the nature of DPOA, guardianship, and alternatives to guardianship:
https://www.washingtonlawhelp.org/issues/aging-elder-law/guardianships-powers-of-attorney-2
https://www.washingtonlawhelp.org/resource/questions-and-answers-on-powers-of-attorney

For more information on the Uniform Guardianship Act and Supported Decision Making please see the following Power Point presentation from the Attorney General's Office.

2021_UGAUpdatesTraining_DDA.pdf