

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT ON DISABILITY SERVICES**



OFFICE OF THE GENERAL COUNSEL

*Subject: Medical and Psychological Affidavits, Declarations and Certifications regarding Capacity for Decision Making*

Dear Medical and Psychological Clinicians:

As you are no doubt aware, a number of people served by the Department on Disability Services (DDS) do not have the capacity to make medical or other types of decisions, and require the assistance of a substitute decision maker. In some situations, the person may have family involved in his or her life. Under District of Columbia law, family members are allowed to provide medical consent for an incapacitated person, and there is a priority list in the law of persons allowed to assist, ranging from parents to the closest living relative or close friend. *See* D.C. Official Code § 21-2210. Other people are not fortunate enough to have family or friends involved, and for those people, the DDS ensures that a court-appointed guardian is put in place as quickly as possible so that those people can receive appropriate medical care in a timely manner.

I currently serve at DDS as the attorney responsible for resolving all the substitute consent and guardianship issues for people served by the DDS. The purpose of this letter is to request your assistance with obtaining a guardian for a person receiving medical or psychological care from your office.

Your involvement is critical to the guardianship appointment process because your role as a health care provider gives you valuable insight into the capacity of the person in question. Your training allows you to render an opinion that the Probate Court evaluates when considering whether to assign the decision-making rights of a person to a court-appointed guardian. The affidavit, declaration, or certification document attached is crucial to the DDS's ability to provide clear and convincing evidence to the Probate Court regarding a person's ability or inability to make decisions in any number of the six areas of capacity. Instead of wasting your valuable time by issuing a subpoena for you to provide your testimony in person at the court hearings, this template is designed to be a more convenient and efficient method of providing your opinion to the Court. An affidavit is considered sworn, certified testimony once notarized and must include complete, legible and correct information. A declaration is also considered sworn, certified testimony by your signature and the inclusion of specific language. I have attempted to make the template as easy to complete as possible, and would welcome any suggestions or comments you have. In addition, I have digital versions of each template

that I am happy to provide to your office if you wish to type your testimony or create your own version of the template for repeated use.

Obtaining your affidavit, declaration or certification is one of the beginning steps in the lengthy guardianship process. To ensure that people receive medical treatment or diagnostic evaluation when needed, the DDS requests that you complete your affidavit, declaration or certification as quickly as possible so that the rest of the guardianship process can move forward. There is a great deal of concern in the community about the length of time it takes to obtain a guardian for the people served by the DDS, so much so that the DDS is required to track and provide periodic reports to the D.C. Council and other community groups about time elapsed for each stage of the guardianship process.

I am happy to further discuss this with you and your counsel (if you retain counsel) to clarify any questions or concerns you may have. Please call me at 202-679-3142 or email me at [neha.patel@dc.gov](mailto:neha.patel@dc.gov). Thank you for your time and assistance.

Sincerely,

Neha Patel  
Deputy General Counsel  
Department on Disability Services

cc: Laura L. Nuss, Director, Department on Disability Services  
Cathy R. Anderson, Deputy Director, Developmental Disabilities Administration  
Mark D. Back, DDS Acting General Counsel