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Planning Options for the Daily Care of a Minor in the Event of an Adult's Incapacity or Death

Naomi R. Cahn

George Washington University Law School, ncahn@law.gwu.edu

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Chapter Six: Planning for the Daily Care of a Minor in the Event of an Adult's Incapacity or Death

By Naomi R. Cahn

Most children grow up in their families of origin with at least one of their parents. Where and with whom the child will live, who can legally provide for the child's emotional and psychological needs, who can choose the child's school are the types of decisions that are typically left to the parents.

When the parents are unable to make those decisions themselves, however, the estate plan or other preparatory documents should address who can act as a guardian with legal rights and responsibilities for the children. Before parents die or are incapacitated, they should ensure that they have planned for the personal care of the child as well as for the child's financial protection. They may choose the same person to serve as the guardian for both financial and personal care, but the functions can be bifurcated. If the parents do not designate a guardian, then a court, applying a best interest of the child standard, will typically choose the next of kin, considering the child's best interests.¹

A guardian of the person is given legal responsibility for the health and welfare of another person (her ward), because the ward is presumed unable to care for herself. The guardian has both physical and legal control over the minor, and the authority includes medical and personal decisions concerning the child's welfare. The guardian is responsible for food, clothing, and shelter for her ward. A conservator (sometimes called a guardian of the estate,

¹ See, e.g., *Huval v. Jacobs*, 548 S.E. 2d 437 (Ga. Ct. App. 2001) (statutory preference for appointing "next of kin" is not absolute where next of kin is "not 'unobjectionable'"); *Jefferson v. Dixon*, 573 So. 2d 769 (Miss. 1990) (construing statute calling for appointment of guardian among next of kin unless that person is unsuitable).

see Chapter 8) is a fiduciary who is responsible for the financial aspects of the child's property).

While they are alive, parents are presumed to be the legal guardians for their children, and if one dies or has had his/her parental rights terminated, then the surviving parent is the sole legal guardian.² As this chapter shows, parents can delegate some of their caretaking responsibilities while they are still competent. When parents are incapacitated or die, then the legal guardian can act for the child. In the absence of adoption, however, the legal guardian is not the parent and must receive an explicit delegation of legal authority from either the court or a statute. Adoption, like guardianship, is a statutory creation; unlike guardianship, however, adoption provides the adoptive parents with the same rights as biological parents and terminates the legal relationship between the child and her biological parents. A legal guardian is more limited in the rights that she can exercise, and the appointment of a guardian does not terminate the child's relationship with her biological family members.³

There are three different methods by which parents can provide for the various methods of personal guardianship of their children: by will, by petition, or through another statutorily-created mechanism, such as standby guardianships. A guardianship by will only comes into effect when both parents are dead, and it is the selection of the last surviving parent which controls. The other two means of creating long-term guardianships can occur while one (or both) parents are living.

² E.g., Conn. Gen. Stat. §45a-606 (2004); R.I. Gen. Laws §33-5-4 (2004); Tenn. Code Ann. § 34-1-102(c) (2004).

³ See Joyce McConnell, *Securing the Care of Children in Diverse Families: Building on Trends in Guardianship Reform*, 10 *Yale J. L. & Feminism* 29, 33(1998).

In addition to these primary methods of guardianship, statutes may provide for more limited delegations of authority, such as the right of a non-parent to consent to medical care. A guardian's authority is defined by the statutory grant, so a guardian appointed pursuant to a medical guardianship statute does not have authority with respect to educational decisions.

States have developed variations within each of these three methods, and there is a Uniform Guardianship and Protective Proceedings Act (UGPPA), promulgated by National Conference of Commissioners on Uniform State Laws in 1997, which has been adopted by five states (Alabama, Colorado, Hawaii, Minnesota, and Montana). The Uniform Probate Code, adopted in almost 20 states, also has provisions for testamentary appointment of a guardian (and the UPC has incorporated the 1997 version of the UGPPA as Part 5).⁴

This chapter discusses who may need a guardian, the various temporary and long-term methods of providing caretaking for a child when the parents are incapacitated or dead, and suggestions on how to choose a guardian.⁵

I. Definition of Minor

While guardianships are useful for anyone who is legally “incompetent,” they generally terminate if and when the incompetency ends. The definition of who is a minor varies from state to state but always includes unemancipated children younger than 18 (although the age is higher in a few states, including Nebraska, Alabama, and Mississippi)..

⁴ Unit. Prob. Code. [__ full cite]

⁵ As Julia Belian notes,

Some jurisdictions, including Arizona, Delaware, District of Columbia, Georgia, Kansas, Massachusetts, Montana, New Mexico, Oregon, and Vermont, also offers something called *permanent* guardianship. A permanent guardianship is difficult to terminate and is designed for children who have been in state custody. Such a guardianship status may be granted only by the juvenile court after it is proven that it is in the best interest of the child that the birth parent should never have physical custody of the child. A birth parent is prohibited from petitioning the court to terminate this permanent guardianship once it is granted. Because of its primary function as an adversarial abrogation of parental rights, this kind of guardianship is not discussed further in this chapter. Cite to Belian draft.

Children may petition a court for emancipation earlier than 18, and if they marry before the age of 18, they are also typically assumed to be emancipated, in which case, the guardianship terminates. In most states, a parent or guardian must consent to marriage of a minor. Emancipation is a legal procedure through which a minor, after making the proper showing to the court, is able to have most or all of the disabilities of minority removed and can assume the legal rights incident to adult status. Almost half of the states have statutory procedures authorizing emancipation, while it remains a common law doctrine in the other states. Emancipation is generally based on a showing that the minor lives separately from her parents and is supporting herself, or has entered into the armed forces; courts may also have discretion to confer emancipation when this is in the best interests of the child.

II. Testamentary Guardianship of the person

When one parent dies, the surviving parent is generally assumed to be the custodian of the child, regardless of what the deceased parent's will provides.⁶ It is only when the surviving parent dies, or in situations when both parents die at once, that a testamentary guardianship is useful.

a. Selection and appointment of guardian

Parents select a testamentary guardian through their will. Under the UPC, the UGPPA, and in some states, a parent can also select a guardian through an "other signed writing," which includes durable powers of attorney and other specific documents for appointing guardians.

If the parents have named a guardian in their will, courts will generally defer to the parents' wishes. Nonetheless, courts retain discretion to disapprove of the parental choice and statutes in some states, such as Arkansas, merely direct that the court give "due regard"

⁶ E.g., Conn. Gen. Stat. § 45a-606 (2004).

to the parents' testamentary request. In Florida, the court must consider the preferences of a minor who is 14 or older as well as the person designated by will.⁷⁸

Courts typically apply a presumption in favor of the testamentary appointment, but allow the presumption to be overcome based on, in the words of a Pennsylvania court, "convincing reasons."⁹ Moreover, regardless of what a will provides, the proposed guardian must file a request to be named guardian and request that the court confirm the parent's wishes. Thus, the guardian must accept the appointment before it becomes effective; appointment is not automatic upon probate of a will.

When minors are 14 or over, the UGPPA will defer to their choice of guardian, unless the appointment is not in the best interest of the child.¹⁰ Moreover, minors 14 and over (and in some states, including Colorado and Texas, 12 or over) as well as a limited group of interested others can object to the guardian nominated by a parent in a will.¹¹

If the parents have not appointed a guardian or the appointed guardian declines to accept the appointment, then courts will typically choose a relative who is the "next of kin." Gay and lesbian parents, and parents with partners who have not legally adopted the children can try to protect the surviving partner's ability to serve as a guardian, but courts do not always respect such testamentary choices.¹²

⁷ Fla. Stat. § 744.312 (3) (2005).

⁸ See *In re Lewis Will*, 74 NYS 2d 865 (Surr. 1947); *Shanks v. Ross*, 173 Ga. 55 (1931); *Gardner v. Hall*, 132 NJ Eq. 64, 26 A.3d 79, *affd*, 31 A2d 805 (1942); *Bristol v. Brundage*, 589 A.2d 1 (Conn. App. 1991)(holding that testamentary guardian was presumptive guardian unless the appointment would be detrimental to the child); More recent cases??

⁹ *In re Slaughter*, 738 A.2d 1013, 1017 (Superior Ct. Pa. 1999); but see *In re Heym*, 19 Pa. D. & C. 3d 748 (1980) (testamentary appointment only one of several considerations in applying a best interest of the child standard).

¹⁰ UGPPA Sec. 206.

¹¹ UGPPA Sec. 203.

¹² See *McGuffin v. Overton*, 542 N.W.2d 288 (Mich. Ct. App. 1995)(appeal denied, 546 N.W. 2d 256 (Mich. 1996)(although biological mother had named lesbian partner as testamentary guardian and as guardian through power of attorney, she did not have standing to challenge an award of temporary custody to the biological father,

b. Guardianship commencement

States vary as to how a guardianship becomes effective but generally require an affirmative statement from the guardian. In some states, such as Oregon, there must be a court order appointing the guardian, the guardian must accept, and the court will then issue “letters of guardianship” which provide notice that the guardianship is effective.¹³

In other states, guardians need only file an acceptance with the court in order for the guardianship to be effective. Once the appointment is effective, then guardians typically do not have to file reports with the court concerning the health and welfare of their wards, although the will can provide otherwise. The Revised Uniform Guardianship and Protective Proceedings Act, however, as well as some states, do require that the guardian submit reports to the court concerning the health and welfare of the minor.

c. Guardian’s powers:

Guardians typically take physical custody of the minor, decide where the child will live, can make educational and medical decisions, and can decide on religious training. Because they function as the parent, they may also consent to the minor’s marriage or adoption in majority of states.¹⁴ As guardians of the person, however, they do not have the same financial responsibility as parents. Guardians are not legally obligated to provide from their own funds for the minor and may receive money payable for the support of the minor to the minor’s parent or guardian under the terms of any statutory benefit or insurance system or any private contract, devise, or trust; a minority of states permit a guardian to petition the

even though the mother had explicitly stated that she did not want the father to have custody because of his lack of relationship with the children).

¹³ Or. Rev. Stat. §125.310 (2005).

¹⁴ See, e.g., Unif. Prob. Code Sec. 5-208.

court for a reasonable compensation for their services as guardian. Additionally, guardians are not liable to third persons by reason of the parental relationship for acts of the minor.

d. Termination of guardianship

The guardianship typically ends when the child is no longer a minor. In addition, the child or another person may petition the court for removal of the guardian, and the court will hold a hearing. To remove a guardian, the petitioner must meet a strict standard; generally, removal is justified only where the guardian has neglected her duties, rather than where removal would be in the best interest of the child. In some states, in recognition of the seriousness of the petition, such as Connecticut, the guardian is entitled to representation in removal proceedings.

e. Benefits and Drawbacks of Testamentary Guardianships

By nominating a guardian, a parent can exercise strong control over the future of the minor and can indicate her choices concerning the future care of the minor.

On the other hand, there are several uncertainties associated with testamentary guardians.¹⁵ First, the parent cannot be certain that the court will accept her nomination because the appointment only takes effect once the will is probated and the parent cannot advocate on behalf of her choice of guardian because she is dead when the will is probated. To overcome this uncertainty, Colorado, Hawaii, and a few other states allow for court confirmation of the appointment prior to the parent's death in certain limited circumstances. In California, parents can request that the court appoint a joint guardian who will serve concurrently with the parent during her lifetime and who assumes sole responsibility when

¹⁵ See generally Carolyn McAllaster, Carol Suzuki, and Jeffrey Selbin, *Issues in Family Law for People with HIV, in AIDS and the Law* 393, 416-18(3d ed. Supp. David W. Webber, ed. 2004)

the parent dies.¹⁶ This option is available however, only if the parent has a “terminal condition.”¹⁷

Second, if the other parent is still living and is not legally incapacitated, then that parent generally assumes legal custody upon the death of the first parent, and the testamentary appointment is irrelevant. Although divorced parents may believe that they can use a testamentary guardianship to preclude custody in the other parent, this is inaccurate. The surviving parent, so long as her rights have not been legally terminated, is presumed to be the guardian regardless of the circumstances of the divorce and the provisions of the testamentary instrument. Fourth, testamentary guardians only assume power after the death of the testator, not upon her incapacity.

IV. Stand-by guardianship

Unlike more conventional forms of guardianship, a stand-by guardian can be appointed before the death or incapacity of parents. Although states have typically been suspicious of inter vivos guardianship appointments, the rise in single mothers and the AIDS epidemic have led states to develop improved mechanisms for confirming the parents’ choice of stand-by guardian while the parents are still alive.¹⁸ A traditional inter vivos guardianship transfers custody and most other parental rights to a third party upon court approval of the guardianship and can be terminated, for example, if the delegating parent withdraws her consent.¹⁹

Rather than displacing parental authority completely and at the time of the guardianship petition, standby guardians exercise authority at the same time. The 1997

¹⁶ Calif. Prob. Code § 2105 (f) (2005).

¹⁷ *Id.*

¹⁸ See McConnell, *Securing the Care*, supra note __, at 38-39.

¹⁹ See, e.g., *In re V.K.S.*, 63 P.3d 1284 (Utah Ct. App. 2003); but see *In re Markham*, 795 S.W.2d 931, 933 (Ark. Ct. App. 1990); *Styck v. Karnes*, 462 N.E.2d 1327, 1329-30 (Ind. Ct. App. 1984).

federal Adoption and Safe Families Act also encouraged states to adopt procedures for standby guardianships, and approximately 20 states now have standby guardianship statutes (see Chart 6 - ?).

Standby guardianship statutes vary, but have the following four general attributes:²⁰

- First, they provide a process for a legal writing, generally witnessed by two people, that designates a person to act as a standby guardian. Aside from a few states, including Florida, Pennsylvania, Illinois, and Massachusetts, parents can only use the standby guardianship process if they have a terminal or chronic illness. Depending on the statutory scheme, parents can petition for the appointment of a stand-by guardian before their incapacity, or they can designate a standby guardian, who then must petition the court for appointment.
- Second, the non-custodial parent has an opportunity to be heard on the issue of standby guardianship through notice of a court hearing.
- Third, a standby guardian does not assume authority until the happening of a triggering event, such as the parent's extended hospitalization or death. Typically, the standby guardian must provide the court with information concerning the occurrence of the triggering event, and both the guardian and the parent share responsibility for the child.
- Fourth, a court determines whether the standby guardianship is in the best interests of the child.

Depending on the state procedure, stand-by guardianships last, most typically, for two years.

The first stand-by guardianship law was enacted in New York, in 1992, primarily as a response to the HIV-AIDS crisis.²¹ Slightly less than half of all states have standby

²⁰ This description is drawn from: Judith Larsen, Standby Guardian Laws: A Guide for Legislators, Lawyers, and Child Welfare Professionals 1-4 (2000)(avail. at <http://standbyguardianship.org/pdf/ABA-SBGLaws.pdf>).

²¹ See Joyce McConnell, Standby Guardianship: Sharing the Legal Responsibility for Children, 7 Md. J. Contemp. Issues 249, 261 (1995-96).

guardianship laws, and they are typically placed in a state's probate codes, although Minnesota's is part of its family code.

In addition to their use in cases of parental incapacity, stand-by guardianships can provide a useful bridging authority between the death of a parent and the probate of a will and appointment of a longer-term guardian.

V. Partial Delegation: Educational and medical consents

Medical and educational consent laws authorize caregivers to make a specific set of limited decisions on behalf of a child when the parent or guardian consents to such a delegation. Like powers of attorney, but unlike formal guardianships, these can be done without court involvement, and statutes often include the forms. The delegation generally must be in writing, although some states may permit oral consent. These delegations are sometimes limited to relative caregivers or to caregivers with whom the child resides, may be limited in duration, and are generally quite limited in the scope of delegation.

These laws basically allow caregivers, who do not have legal custody of a child, to consent to a child's medical treatment and enroll them in school. Unlike testamentary or stand-by guardianships, these partial delegations may not even require parental consent. Several states have statutes establishing who can give educational and medical consent if a parent or other guardian is unavailable and establishing priority between them.

In California, a parent may authorize another person who is caring for the child to consent to medical and dental care.²² In other jurisdictions, the caregiver can choose the child's school. In Louisiana, a caregiver with whom a child resides can, on her own initiative, can execute a form that is valid for up to one year that authorizes her to make

²² "The parent, guardian, or caregiver of a minor who is a relative of the minor and who may authorize medical care and dental care under Section 6550, may authorize in writing an adult into whose care a minor has been entrusted to consent to medical care or dental care, or both, for the minor." Cal. Fam. Code Sec. 6910.

educational and medical decisions with respect to the child, so long as she has made reasonable efforts to notify the parents of her plans.²³ Louisiana also allows for “Provisional Custody by Mandate,” by which a parent can authorize another person “to provide for the care, custody, and control of a minor child” for up to one year.²⁴ In some states, parents can delegate authority to another person for purposes of consenting to the immunization of a minor.²⁵

VI. Temporary and Limited Delegation of Parental Powers

There are a variety of other mechanisms with different names that states have adopted to allow parents and other legally recognized caregivers the ability to delegate some or all of their parental powers and responsibilities to another for a limited period of time. For example, temporary guardians can be appointed while another guardianship is ongoing, or to replace a guardian, or, under the UGPPA, under other circumstances.²⁶ The UGPPA allows for a “limited guardianship” that restricts the powers of a guardian for the purpose “of developing self-reliance of a ward or for other good cause.”²⁷

VII. Powers of Attorney

Through a power of attorney, the principal authorizes an agent to perform specific acts under certain circumstances. Although powers of attorney have typically been used for business purposes, they have expanded into health care decision-making; and, in a growing number of states, powers of attorney can be used for the care of a minor. The UGPPA provides: “A parent or guardian of a minor or incapacitated person, by a power of attorney,

²³ [La. R.S. 9:975](#) (2004)(“Non-legal custodian; consent for certain services; affidavit, form”).

²⁴ La. Rev. Stat. Ann. Sec. 9:951-954 (2004).

²⁵ See McAllistar, *supra* note __, at 453 n.341.

²⁶ E.g., UCPPA Sec. 204 (d)(temporary guardian can be appointed based upon a showing of “immediate need” and that the appointment is in the minor’s best interests); Mich. L.A. 700.5213.

²⁷ UGPPA Sec. 206(b).

may delegate to another person, for a period not exceeding six months, any power regarding care, custody, or property of the minor or ward, except the power to consent to marriage or adoption.”²⁸ This provision is in effect in at least 16 states, and other states, including Ohio, similarly recognize the ability of a principal to delegate parental authority through a power of attorney.²⁹

Benefits: Powers of attorney are relatively easy to accomplish, and can be fairly simple documents.

Drawbacks: Powers of attorney do not create guardianships and are limited in duration.³⁰

VIII. Choosing the guardian

The issue of who should serve as the guardian can be quite complex. While it may be useful to name the same person(s) both guardian of the person and conservator, there may be considerations, such as financial abilities and aptitudes, that might counsel against naming the same person.

Although the parents may want to choose a couple to act as co-guardians, it is important to remember that the couple may divorce and thus, guardianship decisionmaking would become more complicated. It is also important to name at least one alternate, in case the nominated guardian is unable or unwilling to serve at the necessary time.

And it is, of course, critical that the parents ascertain that their chosen guardian is willing to serve. Parents may also leave non-binding instructions as to their wishes concerning the child’s upbringing.

The primary questions for parents in choosing a guardian are:

²⁸ UGPPA Sec. 105 (also UPC Sec. 50105 – check this!).

²⁹ McAllaster et al, *supra* note __, at 451-52. They list the following states, which vary in the length of time that the delegation is accurate: Alabama, Alaska, Arizona, Colorado, Idaho, Indiana, Maine, Michigan, Minnesota, Montana, Nebraska, New Jersey, New Mexico, North Dakota, Oregon, and Utah. *Id.*

³⁰ UGPPA Sec. 105 Commentary.

- Who will provide the best care for my children?
- Will the guardian respect my choices concerning the child's upbringing?
- How comfortable are my child and the guardian with each other?

Additional considerations in choosing a guardian include:

- Living situation (is there enough space in the guardian's residence?)
- Presence of other children
- Religious upbringing
- Location and community
- Familial relationship

As children grow older, the parents may want to revisit the guardianship decision and to discuss the decision with their children. And, the guardian will only serve for children under the age of 18.

Parents can also change the person designated to be a guardian. For testamentary guardians, the parents may execute a new will or a codicil to an existing will; for the other guardianships, the parents will need to sign a new writing with the name of the changed guardian.

IX. Appendices

This chapter includes the following additional resources:

Appendix A

- Comprehensive State Chart indicating which of the above-described caregiving authorizations are available in each state and listing the applicable statutory citations to be consulted.

Appendix B

- Individual State Charts that offer greater detail about the options available in that state.

Appendix C

- Sample Forms for establishing or documenting the different authorities that might be given to a caregiver.

Appendix D

- Resource List, including web sites and other sources of information from various organizations dedicated to helping non-parental caregivers.

These resources provide a summary of relevant laws. Each state and jurisdiction has its own requirements, many of which are established by court rule, which are not summarized in this chapter.

Appendix C: Sample Forms

Sample 1:

A. If my spouse shall not survive me, I nominate, constitute and appoint [*name guardian*], and [*name guardian*], residing in [*address of guardians*], as Co-Guardians of the person and property of my infant child or infant children, if any, during his or their minority. In the event that either [*name guardian*], or [*name guardian*], are unable, unwilling or cease to act as Co-Guardians of my child or children, I nominate, constitute and appoint [*name alternate guardian*], and [*name alternate guardian*], both residing in [*address of alternate guardians*], as alternate Co-Guardians.

B. No bond or other security shall ever be required of the Guardians for acting as such in any jurisdiction, nor shall the Guardians ever be required to make, file or give any annual or other periodic statements or accounts, whether in connection with such Guardians' rights to commissions or otherwise, and whether required by a statute or other rule of law either now or hereafter in force.

C. If the Guardians shall maintain any child of mine in such Guardians' own household, they shall be entitled to receive a reasonable amount from any funds of such child held in trust hereunder in order to alter and improve such residence to accommodate my child or children, or to contribute toward the purchase of a larger home for the Guardian and my child or children, or to contribute to the expenses of operating such household.³¹

³¹ *1-3 Drafting New York Wills § 3.02*

Klipstein, *Drafting New York Wills* Sec. 3.02 (2004).

Sample 2:

§ Form 43.06 Comprehensive guardianship clause [source Y]³²

Should my husband, ____, not survive me, I appoint my sister, ____, of ____, Massachusetts, as guardian of the person and property of any child of mine who may be a minor at the time of my death. If she is unable or unwilling to serve for any reason, I appoint my brother, ____, of ____, Washington, as guardian of the person and property of any of my children who are minors at my death. If neither of the aforementioned persons is able and willing to serve, I request that the appropriate court consult with the aforementioned persons, if they are capable, as well as with ____, my ____, ____, my ____, and ____, my ____, as to who would best serve the interests of my children as guardian of the person and of the property. . . .

Every effort shall be made to assure that both my children have the same guardian of the person and live together in the same residence. My trustee shall be authorized to make distributions to the guardian individually, rather than as guardian, in order to reasonably reimburse her for the costs and inconvenience occasioned by my strong preference in this regard.

Furthermore, every effort should be made to raise both my children in the ____ religion. This matter is extremely important to me and the failure to maintain routine involvement of the children in religious and related social activities shall be sufficient ground for the substitution of the guardian.

Sample 3:

ARTICLE IX: Guardian

If my husband does not survive me and I leave minor children surviving me, I appoint as guardian of the person and property of my minor children my uncle Ernest Entwistle. He shall have custody of my minor children, and shall serve without bond. If he does not qualify or for any reason ceases to serve as guardian, I appoint as successor guardian my cousin Kevin Moon.³³

³² Jeffrey A. Schoenblum, Form 43.06 Comprehensive Guardianship Clauses (Anderson, 2003).

³³ <http://print.estate.findlaw.com/estate-planning/wills/wills-sample.html>.

APPENDIX D: Websites:

This is list of some of the websites which provide further information on issues discussed in this chapter. There are many additional websites which may provide additional state-specific forms and information.

<http://www.courtinfo.ca.gov/programs/cfcc/pdffiles/alterguard.pdf> (discussion of possible alternatives to guardianship in California)

<http://www.nclrights.org/publications/lifelines0505.htm> (brief discussion of long-term planning, including guardianship of a minor)

http://www.ces.purdue.edu/cfs/topics/HD/resources/Medical_Consent.pdf (Indiana Medical Consent information)

<http://www.ces.ncsu.edu/depts/fcs/pub/guardian.html> (North Carolina standby guardian information)

http://www.neighborhoodlaw.org/page/58267&cat_id=35 (Massachusetts standby guardian information)

http://www.illinoislegalaid.org/index.cfm?fuseaction=home.dsp_content&contentid=246 (Illinois guardian of minor in general)

<http://www.gu.org/Files/gpeducation.pdf> (educational consent information—various states)

APPENDIX A: COMPREHENSIVE STATE CHART

**AVAILABILITY OF CHILD CARE OPTIONS
STATE BY STATE STATUTORY REFERENCE
JULIA BELIAN WITH UPDATING FROM KAREN GOFF AND NAOMI CAHN**

Gray blocks indicate no specific statute authorizes this option, although comparable arrangements may be possible under a different option. Please consult state-specific charts for additional information.

STATE	GUARDIANSHIP OF PERSON	STANDBY GUARDIANSHIP	TEMPORARY DELEGATION	EDUCATIONAL CONSENT	MEDICAL CONSENT
ALABAMA	26-2A-70 et seq.				
ALASKA	13.26.030 et seq.		13.26.020		
ARIZONA	14-5201 et seq.		Ariz. Rev. St. §§14-5104, 14-5107.		
ARKANSAS	28-65-201 et seq.	Ark. Code §28-65-221.			20-9-602
CALIFORNIA	Prob. Code 1500 et seq.	Prob. Code §2105.		Fam. Code §§6550, 6552.	Fam. Code §§6550, 6552.
COLORADO	15-14-201 et seq.	15-14-204			25-4-1704
CONNECTICUT	45a-596 et seq.	45a-624		10-253(d)	
DELAWARE	12-3901 et seq.			14-202	13-707
DISTRICT OF COLUMBIA	21-101 et seq.				16-4901
FLORIDA	744.101 et seq.	744.304			743.0645
GEORGIA	29-4-1 et seq.	29-4-51			31-9-2
HAWAII	560:5-201 et seq.				
IDAHO	15-5-201 et seq.				39-4303
ILLINOIS	755-5/11-1 et seq.	755-5/11a-5.3	755-5/11-5.4		

INDIANA	29-3-5-1 et seq.				16-36-1-5
IOWA	633.551 et seq.	633.560			
KANSAS	59-3051 et seq.	59-3074			38-136
KENTUCKY	387.020 et seq.				
LOUISIANA	Civ. Code 250 et seq.				Title 40, 1299.53
MAINE	18A-5-201 et seq.				
MARYLAND	13-701 et seq.	13-903, 13-904			18-4A-02
MASSACHUSETTS	201-3 et seq.	201-2B et seq.			
MICHIGAN	700.5201 et seq.				
MINNESOTA	524.5-201 et seq.	257B.01- 257B.10			
MISSISSIPPI	93-13-7				41-41-3
MISSOURI	475.045 et seq.				431.061
MONTANA	72-5-201 et seq.				
NEBRASKA	30-2605 et seq.	30.2608			
NEVADA	159.044 et seq.				129.040
NEW HAMPSHIRE	463 §1				
NEW JERSEY	3B:12-13 et seq.	3B:12-67 et seq.			
NEW MEXICO	45-5-201 et seq.				24-10-2
NEW YORK	SCPA 1710 et seq.	SCPA 1726			Pub. Health 2504
NORTH CAROLINA	35A-1213 et seq.	35A-1370 et seq.		115C-366	32A-34
NORTH DAKOTA	30.1-27-01 et seq.				23-12-13

OHIO	2111.01 et seq.			3313.64(11)	
OKLAHOMA	30-2-101 et seq.			70-1-113	10-170.1
OREGON	125.200 et seq.				
PENNSYLVANIA	20-2519, 5111 et seq.	23-5602 et seq.			11-2513
RHODE ISLAND	33-54-4, 33-15.1-1 et seq.				
SOUTH CAROLINA	62-5-301 et seq.			59-63-32	
SOUTH DAKOTA	29A-5-201 et seq.				
TENNESSEE	34-1-101 et seq.				
TEXAS	Prob. Code 676 et seq.				Fam. Code 32.002, 32.101
UTAH	75-5-201 et seq.				78-14-5
VERMONT	14-2645 et seq.				
VIRGINIA	31-2 et seq.				54.1-2969
WASHINGTON	11.88.010 et seq.	11.88.125			
WEST VIRGINIA	44-10-1 et seq.	44A-5-1 et seq.			
WISCONSIN	880.01 et seq.	48-978			
WYOMING	3-2-101 et seq.	3-2-108			

Appendix B, Individual State Charts

Prepared by Naomi Cahn and Karen Virginia Goff

ALABAMA

Testamentary Guardian of the Person (Ala. Code §§ 26-2A-70 et seq. (2005))	
Who Can Appoint?	Parent of an unmarried minor. ¹ Court under some circumstances.
How?	Will, or other writing signed by parent and attested by at least two witnesses.
Objection by Minor?	Minor 14 or older may prevent the appointment by filing a written objection before, or within 30 days after receiving notice of acceptance. ²
Court Role?	Where nominee fails to accept, or minor objects, the court shall appoint person nominated by minor over 14, unless finds contrary to best interest.
For What Purpose?	Powers and responsibilities of a parent regarding ward's health, support, education, or maintenance; consent to medical treatment.
When Takes Effect?	If both parents are dead or incapacitated or the surviving parent has no parental rights, appointment becomes effective when guardian files acceptance in court.
How Terminate?	Terminate upon the death, resignation ³ , or removal ⁴ of guardian or upon minor's death, adoption, or attainment of majority
Guardian Compensation	Guardian is entitled to reasonable compensation, but only as approved by the court or conservator appointment for the estate or ward.

¹ An effective appointment by the parent who dies or became incapacitated later in time has priority.

² Objection does not preclude appointment by the court of the parental nominee.

³ Resignation of guardian does not terminate guardianship until it has been approved by the court.

⁴ Any person interested in the welfare of the ward may petition for removal of a guardian on the ground that it would be in the best interest of the ward.

ALASKA

	Testamentary Guardian of the Person (Alaska Stat. §§ 13.36.030 et seq. (Michie 2004))	Temporary Delegation (Alaska Stat. § 13.26.020 (Michie 2004))
Who Can Appoint?	Parent of unmarried minor. ¹ Court under some circumstances.	Parent or guardian of a minor
How?	By will	By properly executed power of attorney
Objection by Minor?	Minor 14 or older may prevent appointment by filing a written objection with the court before, or within 30 days after notice, of guardian's acceptance. ²	
Court Role?	Court may appoint guardian if testamentary guardian failed to accept within 30 days, or minor objects. Court shall appoint person nominated by minor over 14 unless not in best interest of minor.	
For What Purpose?	Guardian has powers and responsibilities of a parent, including facilitating ward's education, social, or other activities and authorizing medical treatment.	Delegate any powers regarding care, custody, or property of the minor, except the power to consent to marriage or adoption for a period not exceeding one year.
When Takes Effect?	If both parents are dead or the surviving parent is adjudged incapacitated, the appointment takes effect upon filing acceptance.	
How Terminate?	Upon the death, resignation ³ , or removal ⁴ of guardian or upon minor's death, adoption, marriage, or attainment of majority.	
Subsidization Guardianship	Procedures relating to subsidized guardianships for hard-to-place children governed in §§ 25.23.200-25.23.240.	

¹ If both parents are dead, an effective appointment by the parent who died later has priority.

² Objection does not preclude appointment by the court of the testamentary nominee.

³ Resignation of guardian does not terminate guardianship until it has been approved by the court.

⁴ Any person interested in the welfare of the ward, or the ward, may petition court for removal on the ground that it would be in the best interest of the minor.

ARIZONA

	Testamentary Guardian of the Person (Ariz. Rev. Stat. §§ 14-5201 et seq. (2004))	Temporary Delegation (Ariz. Rev. Stat. § 14-5104 (2004))	Temporary Delegation (Ariz. Rev. Stat. § 14-5107 (2004))
Who Can Appoint?	Parent of unmarried minor. ¹ Court under some circumstances	Parent or guardian of minor	Military member who is a parent or guardian of a minor
How?	By will	Properly executed power of attorney	By power of attorney
Objection by Minor?	Minor 14 or over may prevent appointment by filing a written objection before, or within 30 days after notice, of guardian's acceptance		
Court Role?	Court may appoint guardian if testamentary guardian fails to accept or if minor objects to appointment. Court may appoint person nominated by minor over 14, unless contrary to best interests of minor. ²		
For What Purpose?	Powers and responsibilities of a custodial parent regarding the ward's support, care and education; can consent to medical care.	May delegate any powers regarding care, custody or property of the minor child, except power to consent to marriage or adoption, for a period not exceeding six months	May delegate any powers the parent or guardian has regarding care, except power to consent to marriage or adoption, for a period not exceeding one year.
When Takes Effect?	If both parents are dead of the surviving parent is adjudged incapacitated, it becomes effective upon filing the guardian's acceptance with court.		
Guardian Compensation?	Reasonable compensation, but only as approved by order of court or conservator if appointed for the estate of the ward.		
How Terminate?	Upon death, resignation ³ or removal ⁴ of guardian or on minor's death, adoption, marriage or attainment of majority		

¹ If both parents are dead, an effective appointment by the parent who died later has priority.

² Before court may appoint a guardian, a criminal background investigation shall be conducted in order to determine the applicant's suitability as a guardian.

³ Resignation of guardian does not terminate guardianship until approved by the court.

⁴ Any person interested in the welfare of a ward, or ward over 14 may petition for removal of a guardian.

ARKANSAS

	Testamentary Guardian of the Person (Ark. Code Ann. §§ 28-65-201 et seq. (Michie 2004))	Standby Guardian (Ark. Code Ann. § 28-65-221(Michie 2004))	Medical Consent (Ark. Code Ann. § 20-9-602(Michie 2004))
Who Can Appoint?	Court	Court	Any parent for a minor child, or adult child of unsound mind. During the absence of an authorized parent, any grandparent.
How?	Court shall appoint guardian most willing to serve, having due regard to: any request contained in a will or other written instrument by the parent; any request made by a minor 14 or older; the relationship by blood or marriage to the minor.	Without surrendering parental rights, any parent who is chronically ill or near death may have standby guardian appt. by the court	Oral or written consent
Minor Substitution?	When a minor turns 14, her guardian may be removed on petition of the ward to have another person appointed. If person is suitable, qualified, and in best interest, that person shall be appointed		
For What Purpose?	Not specified by statute.		Authorization to consent to any surgical, or medical treatment or procedure which may be suggested by a physician
When Takes Effect?	Not specified by statute.	Standby guardian's authority would take effect upon: the death of the parent; the mental incapacity of the parent; physical debilitation and consent of the parent.	
How Terminate?	Guardian dies, resigns, or is removed by court.		

CALIFORNIA

	Testamentary Guardian of the Person (Cal. Prob. Code §§ 1500 et seq.(Deering 2005))	Standby Guardian (Cal. Prob. Code § 2105 (Deering 2005))	Educational Consent (Cal. Fam. Code §§ 6550, 6552 (Deering 2005))	Medical Consent (Cal. Fam. Code §§ 6550, 6552 (Deering 2005))
Who Can Appoint?	Court (Parent may nominate a guardian for a minor child in a will, but not effective until court appt.)	Court	Caregiver, 18 years or older	Caregiver, who is a relative
How?	Upon petition by relative of minor or other person, the court may appoint a guardian	Appoint the custodial parent and a person nominated by the custodial parent as joint guardians	Authorization affidavit (lines 1-4)	Authorization affidavit (lines 1-8)
For What Purpose?	Not specified by statute.	If a custodial parent has been diagnosed as having a terminal condition	Enroll in school, and consent to school-related medical care	Same rights to authorize medical care and dental care for minor that are given go guardians
When Takes Effect?	Nomination is effective when made, except a written nomination may provide that it only becomes effective upon the occurrence of an event (such as death of person making nomination)	Upon appointment	Upon authorizing consent, except that decision shall be superseded by any contravening decision of the parent	Upon authorizing consent, except that decision shall be superseded by any contravening decision of the parent
How Terminate?	Not specified by statute.		If minor stops living with the caregiver	If minor stops living with the caregiver

COLORADO

	Testamentary Guardian of the Person (Colo. Rev. Stat. §§ 15-14-201 et seq. (2004))	Temporary Delegation (Colo. Rev. Stat. § 15-14-204 (2004))	Medical Consent (Colo. Rev. Stat. § 25-4-1704 (2004))
Who Can Appoint?	Parent	Court	Parent or legal guardian
How?	<p>By will or other signed writing (signed by parent/guardian and two witness)</p> <p>Upon petition of a parent and a finding that the parent will likely become unable to care for the child w/in 2 years, the court may (before the appointment becomes effective) confirm the selection of a guardian and terminate the rights of others to object. Minor 12 or older must consent.</p>	<p>Upon showing that an immediate needs exists and that appointment would be in best interest of minor.</p>	<p>May delegate authority to consent verbally or in writing to a stepparent, adult relative of first or second degree of kinship, or an adult child care provider who has care and control of the minor.</p> <p>In the case of verbal designation of authority, the person authorized to consent must confirm in writing at time of consent.</p>
Objection?	Until court confirmation, a minor 12 or older or person other than guardian may object. ¹		
Court Role?	Court may appoint if parental appointee fails to accept. Court shall appoint guardian nominated by minor 12 or older unless not in best interest of minor.		
For What Purpose?	Appointment may specify desired limitations on the powers to be given. Otherwise, guardian has the duties and responsibilities of a parent regarding the ward's support, care, education, health, and welfare.	Authority of unlimited guardian for a period not exceeding 6 months.	<p>To authorize immunization of minor. Must provide accurate health information about the minor to health care provider.</p> <p>Person may not consent to immunization of minor if he/she has actually knowledge that the parent or guardian has expressly refused to give consent.</p>

¹ Court can still appoint the person selected or can appoint temporary guardian.

When Takes Effect?	Upon the death of the appointing parent; an adjudication that parent is an incapacitated person; or written determination by a physician that the parent is no longer able to care for the child, an acceptance by guardian and court confirmation of the appointment		
Compensation?	Guardian entitled to reasonable compensation as approved by the court.		
How Terminate?	Upon the minor's death, adoption, emancipation, attainment of majority, or as ordered by the court.		

CONNECTICUT

	Testamentary guardian of the person (Conn. Gen. Stat. §§45a-596 et seq. (2004))	Standby Guardian (Conn. Gen. Stat. §45a-624 (2004))	Educational Consent (Conn. Gen. Stat. §10-253(d) (2004))
Who Can Appoint?	Parent of unmarried minor ¹	Parent/guardian may designate	Appointment not provided for in statute. Parent may consent to child residing with relative.
How?	By will or other signed writing ²	Designation shall be in signed writing and dated by principal and 2 witnesses. If both parents are alive, both must consent to designation.	School board may require documentation from parent that residence is to be permanent and not for the sole purpose of obtaining school accommodations.
Minor Substitution?	Minor over 12 may apply for substitution of guardian to supersede previously appointed guardian.		
For What Purpose?	Care and control of minor	Same as for testamentary guardian	Cannot be for sole purpose of obtaining school accommodations.
When Takes Effect?	When guardian's written acceptance is filed in court. ³	Takes effect upon the occurrence of a contingency, including mental incapacity, physical debilitation or death or principal	
How Terminate?	Not specified in statute.	Authority and obligations shall cease when specified contingency no longer exists or after expiration of one-year period, whichever is sooner	

¹ Mandatory appointment of parent's testamentary choice of a guardian; presumption that best interests of child served by the appointment may be rebutted only by showing such appointment would be detrimental to the child.

² If two or more instruments contain an appointment, the latest effective appointment made by the last surviving parent has priority.

³ If court finds necessary for protection of minor, it may require guardian to furnish a probate bond.

DELAWARE

	Testamentary guardian of the person (Del. Code Ann. tit. 12 §§ 3901 et seq. (2005))	Educational Consent (Del. Code Ann. tit. 14 § 202 (2005))	Miscellaneous Medical (Del. Code Ann. tit. 13 § 707 (2005))
Who Can Appoint?	Court	Court	No appointment provided for.
How?	<p>Sole surviving parent of minor may name guardian (in written declaration or will) who shall be appointed if there is no cause to the contrary.</p> <p>When there is no designation by parent, minor 14 or over may choose guardian.¹</p> <p>If under 14, court may appoint according to its discretion.</p>	<p>If child seeks to be considered resident of a school district based on residence of anyone other than parent, court must give signed order appointing as the child’s guardian the resident with whom he/she is residing and guardian must complete the “Caregivers School Authorization”</p>	<p>Consent to performance of medical care upon a minor may be given by:</p> <ol style="list-style-type: none"> 1) parent or guardian of any minor 2) married minor for himself/herself (or by spouse if minor unable to give consent) 3) minor 18 or more 4) minor parent for his/her child 5) any person serving as temporary custodian of minor for treatment of life threatening disease 6) relative acting pursuant to an Affidavit of Establishment of Power to Relative Caregivers to Consent to Medical Treatment of Minor
For What Purpose?	<p>Make provision for the care, comfort, and maintenance of the minor and give consent to receive medical care</p>	<p>In order to be considered a resident of a school district and to attend that school district. Caregiver authorized to act in place of parent with respect to child’s education decisions (including but not limited to special education decisions) and will be contacted by school regarding truancy, discipline, and school-based medical care.</p>	<p>Consent to the performance upon or for any minor by any licensed medical, surgical, dental, psychological or osteopathic practitioner or nurse of any lawful medical treatment.</p>
When	Not specified by statute.		

¹ When guardian is appointed by court for minor under 14 and there is no written designation by the minor’s parent, the minor can choose another person as guardian upon reaching 14 and court shall appoint that person if there is no just cause to the contrary.

Takes Effect?			
How Terminate?	Court may remove guardian for any sufficient cause. Guardian may be allowed to resign. Court will then appoint a successor guardian. Guardianship automatically terminates when minor attains age of 18 years.	If child is appointed another guardian	

DISTRICT OF COLUMBIA

	Testamentary guardian of the person (D.C. Code Ann. §§ 21-101 et seq. (2005))	Medical Consent (D.C. Code Ann. § 16-4901 (2005))
Who Can Appoint?	When one parent is dead, the other may appoint a guardian of the person of his minor child.	Parent or guardian
How?	By will.	Any written form signed by parent or guardian may authorize an adult person, in whose care the minor has been entrusted to consent to medical care. ¹
Minor Selection?	If guardian is appointed minor over 14 shall be entitled to select and nominate his/her guardian. Court shall pass upon character and competency of selected guardian. When minor reaches 14, she can select a new guardian notwithstanding earlier appointment.	
Court Role?	If the person so appointed refuses or if no testamentary appointment, then court appoints on its own discretion or on application of next of friend of minor.	
For What Purpose?	For the care, custody and tuition of a minor child	Consent to medical, surgical, dental, developmental screening and/or mental health examination or treatment, including immunization.
When Takes Effect?	Upon appointment or confirmation of court.	
How Terminate?	Guardianship ends when minor becomes 18 or marries.	Parent can revoke authorization at any time.

¹ § 16-4901 includes a sample authorization form.

FLORIDA

	Testamentary guardian of the person (Fla. Stat. Ann. §§ 744.101 et seq. (West 2004))	Standby Guardian (Fla. Stat. Ann. §744.304 (West 2004))	Miscellaneous Medical (Fla. Stat. Ann. §743.0645 (West 2004))
Who Can Appoint?	Court	Court	Appointment not provided for by statute. Parent or guardian has power to consent to medical care for minor. If person who has power to consent cannot be found, the power to consent, in order of priority is given to: a) person who possess a power of attorney b) stepparent c) grandparent d) adult brother or sister e) adult aunt or uncle
How?	Court shall give preference to appointment of person who is related by blood or marriage to ward and consider preference of minor over 14 and any person designated in any will in which the ward is a beneficiary.	Upon petition or consent of both parents, if living, or the surviving parent Court can also appoint an alternate to the guardian to act if the standby guardian shall renounce, die, or become incapacitated.	
For What Purpose?	Exercise powers of plenary guardian.		To consent to medical care or treatment including blood testing, immunizations, tuberculin testing, but does not include surgery, general anesthesia, provision of psychotropic medications, or other extraordinary procedures.
When Takes Effect?	Upon appointment by court.	Immediately on the death or adjudication of incapacity of the last surviving parent of a minor. Within 20 days after assumption of duties as guardian, standby shall	After reasonable attempt, a person who has the power to consent as otherwise provided by law cannot be contacted by the treatment provider.

		petition for confirmation of appointment.	
How Terminate?	Upon death of minor or removal by court.		

GEORGIA

	Testamentary guardian of the person (Ga. Code Ann. §§29-4-1 et seq. (2004))	Standby Guardian (Ga. Code Ann. §§29-4-51 et seq. (2004))	Miscellaneous Medical (Ga. Code Ann. § 31-9-2 (2004))
Who Can Appoint?	Parent	A designating individual including parent or legal guardian	Appointment not provided for by statute.
How?	By will	Designation shall be in writing ¹ and signed by designating individual and 2 witnesses. ²	Any of the following is authorized to consent to treatment: parent or guardian, person temporarily standing in loco parentis, whether formally or not, for the minor under his care
Court Role?	Probate court for county where a minor is domiciled can appoint if parents fail to do so. ³ Minor 14 or older can select guardian and court will accept if “judicious.” ⁴	No court appointment necessary	
For What Purpose?	Not specified by statute.	Assume all rights, duties, and responsibilities of guardianship of the person of the minor.	Consent to surgical or medical treatment or procedures not prohibited by law.
When Takes Effect?	After guardian takes an oath before the judge to perform duties required. A bond may be required.	Upon the health determination being made; without necessity for judicial intervention. Standby guardian must file with the probate court of the county where minor resides notice of guardianship with a copy of	

¹ § 29-4-53 includes a sample standby guardian designation form.

² Standby guardianship may be revoked at any time by destruction of the designation done by the designating individual; revocation must be communicated to standby guardian to be effective.

³ Among relatives applying for guardianship of minor, the nearest of kin by blood, if otherwise unobjectionable, shall be preferred. However, court can exercise discretion and grant guardianship to one who is not a blood relative.

⁴ Having once exercised privilege of selecting guardian, the ward may not do so again, except upon cause shown for the removal

		designation and proof that health determination was made.	
How Terminate?	Not specified by statute.	<p>Except as otherwise stated, shall be automatically terminated four months after the making of the health determination.</p> <p>If designating individual dies, standby guardianship terminates in favor of testamentary designation of a guardian.</p>	

HAWAII

	Testamentary guardian of the person (Haw. Rev. Stat. Ann. §§ 560:5-201 et seq. (Michie 2004))
Who Can Appoint?	Parent or court.
How?	By will or other signed writing, and confirmed by court. Appointment may specify limitations of powers. Parent can file petition for confirmation of selection upon a finding that appointing parent will become unable to care for child within 2 years.
Objection?	Until the court has confirmed parental appointment, a minor 14 or older, the other parent, or person other than parent having care of minor may prevent appointment by filing written objection. ¹
Court Role?	Court may appoint guardian if all parental rights terminated; appointment prevented by minor; or parental appointee failed to accept. Court shall appoint person nominated by minor over 14, unless contrary to best interest of minor.
For What Purpose?	Guardian has all duties and responsibilities of parent regarding ward's support, care, education, health, and welfare, including power to consent to medical care for ward.
When Takes Effect?	Appointment effective upon appointing parent's death or incapacitation. Guardian eligible to act upon acceptance of appointment with court.
Guardian Compensation?	Guardian shall be entitled to reasonable compensation as approved by court.
How Terminate?	Terminates upon minor's death, adoption, emancipation or attainment of majority, or as ordered by the court.

¹ Objection shall not preclude judicial appointment of the person selected by parent.

IDAHO

	Testamentary guardian of the person (Idaho Code §§ 15-5-201 et seq. (Michie 2004))	Miscellaneous Medical (Idaho Code § 39-4303 (Michie 2004))
Who Can Appoint?	Parent of unmarried minor ¹	Appointment not provided for by statute.
How?	By will.	Parent or guardian can consent to health treatment for minor. If parent not readily available, consent can be given by any competent relative or any person representing himself or herself as responsible for the health care of such person.
Minor Objection?	Minor 14 or older may prevent appointment of testamentary guardian by filing written objection before or within 30 days after notice of guardian's acceptance. ²	
Court Role?	Court may appoint if testamentary guardian failed to accept or was prevented by minor. Court must appoint person nominated by minor 14 or older unless contrary to best interests of minor.	
For What Purpose?	Guardian has powers and responsibilities of a parent; is empowered to facilitate ward's education and social activities, and to authorize medical care.	Consent to hospital, medical, dental or surgical care, treatment of procedures.
When Takes Effect?	Upon filing acceptance of testamentary appointment in court in which the will is probated or upon appointment by the court.	At time of consent.
How Terminate?	Upon death, resignation ³ or removal ⁴ of guardian, or upon minor's death, adoption, marriage, or attainment of majority.	

¹ Appointment by parent who died later has priority.

² Objection does not preclude appointment by the court of the testamentary nominee.

³ Resignation does not terminate until approved by the court.

⁴ Any person interested in the welfare of the ward, or the ward if 14 or over, may petition for removal of guardian on the ground that it would be in the best interest of the ward.

ILLINOIS

	Testamentary guardian of the person (755 Ill. Comp. Stat. 5/11-1 et seq. (2004))	Temporary Delegation (755 Ill. Comp. Stat. 5/11-5.4 (2004))	Standby guardian (755 Ill. Comp. Stat. 5/11a-5.3 (2004))
Who Can Appoint?	Court Parent may designate person to be appointed. ¹	Parent ²	Parent may designate a person to be appointed as standby guardian. ³ Court may also appoint.
How?	Parental designation can be made in any writing, including a will. Upon filing petition for appointment or on its own motion, court shall appoint guardian in best interest of minor. There is a presumption in favor of parental designation but court can appoint another guardian. Minor 14 or over may nominate the guardian subject to approval of the court.	In written instrument signed by appointing parent and 2 witnesses. Person appointed must also sign.	Parent may designate by will or any signed writing. Court may appoint upon filing of petition for appointment by standby guardian.
For What Purpose?	Under direction of the court guardian has custody, nurture and tuition of minor, including education of ward	Under direction of the court guardian has custody, nurture and tuition of minor, including education of ward.	Under direction of the court the guardian has custody, nurture and tuition of minor, including education of ward.
When Takes Effect?	Upon court appointment.	Immediately upon date written instrument is executed, unless instrument provides that appointment effective upon later specified date/event.	Upon knowledge of death or consent of minor's parents; inability of minor's parents to carry out day to day child care. Standby guardian can act for 60 days without direction of court, but must file petition for appointment within that time. ⁴

¹ Whenever both parents or a minor are deceased, visitation rights shall be granted to grandparents of minor, unless shown to be detrimental to best interests of minor. Reasonable visitation rights may also be granted to any other close relative.

² Parent shall not appoint short-term guardian if minor has another living parent whose parental rights have not been terminated and who is willing and able to carry out day-to-day care of minor, unless nonappointing parent consents.

³ § 11-5.3 includes a sample "Designation of Standby Guardian" form

⁴ Guardian must take and file an oath or affirmation that standby guardian will faithfully discharge duties of the office.

How Terminate?	Upon minor reaching age of majority (18) or upon death, incapacity, resignation or removal of guardian.	60 days from date appointment is effective.	Upon death, incapacity, resignation or removal of guardian.

INDIANA

	Testamentary guardian of the person (Ind. Code Ann. §§ 29-3-5-1 et seq. (Michie 2004))	Miscellaneous Medical (Ind. Code Ann. § 16-36-1-5 (Michie 2004))
Who Can Appoint?	Court	Appointment not provided for by statute.
How?	Any person can file petition for appointment of a person to serve as guardian. Court shall have a hearing and shall appoint person most suitable and willing to serve having due regard to: request contained in a will, request made by minor 14 or older, relationship of proposed guardian to minor, best interest of minor.	Any of the following can authorize medical care for minor: guardian, parent, adult sibling if parent not reasonably available
For What Purpose?	Not specified by statute.	Health care for a minor
When Takes Effect?	Upon court appointment.	
How Terminate?	Court shall terminate upon: minor attaining 18 years of age, minor's death. Court may terminate guardianship of minor upon minor's adoption or marriage.	

IOWA

	Testamentary guardian of the person (Iowa Code §§ et seq. 633.551 (2004))	Standby Guardian (Iowa Code § 633.560 (2004))
Who Can Appoint?	Court	Court
How?	<p>Any person may file petition for appointment of guardian for a minor. No notice to minor required. Burden of persuasion is on the petitioner to show by clear and convincing evidence that appointment is necessary.</p> <p>Preference given to person nominated as guardian in a will executed by parent, and any qualified and suitable person requested by minor 14 or older.</p>	Upon petition for the appointment of a guardian on a standby basis
For What Purpose?	Provide care for minor, including approve medical care.	
When Takes Effect?	Upon appointment of court.	
How Terminate?	Not specified by statute.	

KANSAS

	Testamentary guardian of the person (Kan. Stat. Ann. §§ 59-3051 et seq. (2003))	Standby Guardian (Kan. Stat. Ann. § 59-3074 (2003))	Medical Consent (Kan. Stat. Ann. § 38-136 (2005))
Who Can Appoint?	Court	Court	Parent, unless not reasonably available.
How?	<p>Court must give priority to:</p> <ol style="list-style-type: none"> 1) parent’s choice; 2) choice of minor over the age of 14. <p>Court shall consider workload, capabilities and potential conflicts of interest of proposed guardian</p>	<p>Upon petition by individual that includes factual basis for the need of a standby guardian.</p>	<p>Can delegate in written consent to: grandparent, adult brother or sister (or half brother or half sister), adult aunt or uncle, stepparent, another adult who has care and control of minor</p> <p>If parent is not reasonably available and no written consent was given, the following can consent: grandparent, adult brother or sister (or half brother or half sister), adult aunt or uncle, stepparent, another adult who has care and control of minor. A person cannot consent if they have actual knowledge that parent has expressly refused to give consent to the immunization.</p>
For What Purpose?	Custody and control of the minor, including minor’s care, treatment, education, support, and maintenance.	Responsibility to assume duties, responsibilities, and powers of a guardian upon temporary absence or impairment of the guardian.	Authority to allow immunization of minor
When Takes Effect?	Upon court appointment.	Upon filing of acceptance with court.	Upon delegation
How Terminate?	Any one may file with the court request that court and guardianship. It also terminate when minor becomes 18.		Delegation terminates with death of parent

KENTUCKY

	Testamentary guardian of the person (Ky. Rev. Stat. Ann. §§ 387.020 et seq. (Michie 2004))
Who Can Appoint?	<p>Court</p> <p>Last surviving parent may nominate guardian by will</p> <p>Minor over 14 may nominate own guardian</p>
How?	Court shall appoint any person in the best interest of the minor, taking into consideration the person nominated in a will and if the minor is over 14, a guardian nominated by the minor.
For What Purpose?	Guardian has powers and responsibilities of a parent regarding the ward's support, care, medical care, and education, but is not personally liable for the ward's expenses.
When Takes Effect?	Upon appointment
Compensation	Guardians receive reasonable compensation for their services and reimbursement of expenses from the estate of the ward.
How Terminate?	Court shall remove guardian if guardian becomes insane, becomes incapable of discharging the duties of appointment, or fails to discharge duties of appointment.

LOUISIANA

	Testamentary guardian of the person (La. Civ. Code Ann. art. 250 et seq. (West 2004))	Miscellaneous Medical (La. Rev. Stat. Ann. § 40: 1299.53 (West 2004))
Who Can Appoint?	Last surviving parent. Must be confirmed by the court.	Appointment not provided for in statute. Any one of the following may authorize medical treatment for minor: parent, patient's sibling, patient's other ascendants, any person temporarily standing in loco parent is for the minor
How?	By will.	
Court Role?	If no will, then court shall appoint from among the qualified ascendants in the direct line the person whose appointment is in the best interests of the minor.	
For What Purpose?	Not specified by statute.	Medical treatment
When Takes Effect?	Upon court confirmation or appointment.	
How Terminate?		

MAINE

	Testamentary guardian of the person (Me. Rev. Stat. Ann. tit. 18-A §§ 5-201 et seq. (West 2004))
Who Can Appoint?	Parent of an unmarried minor ¹ or court
How?	By will
Minor Objection?	A minor 14 or older may file a written objection to the appt. before it is accepted or within 30 days after notice of acceptance.
Court Appointment?	Court may appoint guardian if all parental rights have been terminated or if testamentary guardian does not accept. Appointment of parent that has not been prevented by minor has priority over any appt. by the court but court can appoint upon a finding that the testamentary guardian failed to accept appointment. Court shall appoint person nominated by minor over 14 unless contrary to best interest of minor.
For What Purpose?	Guardian must take reasonable care of ward's personal effects; is empowered to facilitate ward's education and social activities and to give consent to medical care.
When Takes Effect?	Subject to right of minor to object, becomes effective upon acceptance of testamentary/court appointment
How Terminate?	Terminates upon the death, resignation ² or removal ³ of guardian or upon minor's death, adoption, marriage, or attainment of majority.

¹ If both parents are dead, an effective appointment by the parent who died later has priority

² A guardian may petition for permission to resign.

³ Any person interested in welfare of a ward, or the ward if 14 or over, may petition for removal of a guardian on the ground that it would be in the best interest of the ward.

MARYLAND

	Testamentary guardian of the person (Md. Code Ann., Est. & Trusts §§ 13-701 et seq. (2004))	Standby Guardian (Md. Code Ann., Est. & Trusts §§ 13-903-904 (2004))	Medical Consent (Md. Code Ann., Health-Gen. I § 18-4A-02 (2004))
Who Can Appoint?	Surviving parent of a minor may appoint. Guardian need not be approved by any court.	Court	Parent
How?	By will	Parent of minor can file for judicial appointment of standby guardian. Petition must be joined by each person having parental rights over the minor. Petition must state that there is a significant risk that petitioner will become incapacitated or die within 2 years of the filing of the petition. Alternatively, parent can make a written designation; standby guardian shall file a petition for judicial appt. within 180 days of the date of the beginning of the standby guardianship. ¹	Can delegate authority to consent verbally or in writing to any of the following: grandparent, adult brother or sister, adult aunt or uncle, stepparent, any other adult who has care and control of the minor. If delegation is verbal, delegated person shall confirm in writing at time of consent. If parent not reasonably available, the following can consent: grandparent, adult brother or sister, adult aunt or uncle, stepparent, any other adult who has care and control of the minor unless person has actual knowledge that parent has expressly refused to consent to immunization.

¹ §13-904 includes a standby guardian designation form.

Court Appointment?	If neither parent is serving as guardian and no testamentary appointment has been made, a court may appoint. If minor is 14 or older, court shall appoint person designated by the minor, unless not in minor's best interest.	Yes, court appoints. Court shall appoint standby guardian designated/petitioned by parent.	
For What Purpose?	See above.	Petition for appointment/designation shall state the duties of the standby guardian.	Authority to consent to minor immunization
When Takes Effect?	Not specified by statute.	Petition for appointment/designation shall state whether the authority of the standby guardian becomes effective on the petitioner's incapacity, death or whichever occurs first.	
Compensation?	None. Unless will provides otherwise.	Not specified by statute.	
How Terminate?	Not specified by statute.		

MASSACHUSETTS

	Testamentary guardian of the person (Mass. Ann. Laws ch. 201, §§ 3 et seq. (Law. Co-op. 2005))	Standby Guardian (Mass. Ann. Laws ch. 201, §§ 201 2B et seq. (Law. Co-op. 2005))
Who Can Appoint?	Parent of minor child	Parent may designate, court appoints
How?	By will	Designation must be in writing and witnessed by 2 or more persons. Proxy must file a petition for appointment as guardian within 90 days of commencement of authority to act. Court will appoint upon filing of a petition for appointment.
For What Purpose?	Custody of minor's person and care of his/her education.	The commencement of authority of guardian does not divest the parents of any parental or guardianship rights, but gives concurrent authority to the proxy.
When Takes Effect?	When guardian accepts appointment by filing bond in acceptable form	Takes effect upon the death, consent or incapacity of minor's parents.
How Terminate?	When minor reaches the age of 18 or marries.	Parent can withdraw consent and the proxy becomes inactive, with ongoing standby authority.

MICHIGAN

	Testamentary guardian of the person (Mich. Comp. Laws §§ 700.5201 et seq. (2005))
Who Can Appoint?	Parent ¹ or court
How?	Parental appointment can be made by will or other signed writing by the parent and attested by at least 2 witnesses
Objection By Minor?	Minor 14 or older may file a written objection to the appointment before it is accepted or within 28 days after its acceptance. ²
Court Appointment?	Court may appoint if guardian appointed by parent has been nullified by objection of minor over 14 or if testamentary guardian failed to accept appointment. ³ If minor is 14 or older, court shall appoint person nominated by minor, unless contrary to the minor's welfare.
For What Purpose?	Same as parent, and must facilitate ward's education and social activities, and shall authorize medical care.
When Takes Effect?	Subject to objection by minor, becomes effective when guardian files acceptance in court.
How Terminate?	Guardian's authority and responsibility terminate upon guardian's death, resignation ⁴ or removal ⁵ or upon the minor's death, adoption, marriage, or attainment of majority.

¹ If both parents are dead, an effective appointment by the parent who died later has priority.

² Objection does not preclude appointment by the court of the parental nominee or another suitable person.

³ §700.5204 identifies several other circumstances where a court may appoint a guardian.

⁴ Resignation does not terminate guardianship until it is approved by the court.

⁵ A person interested in ward's welfare, or ward if 14 or older, may petition for removal of guardian on the ground that removal would serve the ward's welfare.

MINNESOTA

	Testamentary guardian of the person (Minn. Stat. §§ 524.5-201 et seq. (2004))	Standby Guardian (Minn. Stat. §§ 257B.01-257B.10 (2004))
Who Can Appoint?	Parent or court	Parent can designate unless there is another legal parent whose parental rights have not been terminated, whose whereabouts are known, and who is willing and able to take care of child. ¹
How?	By will or other signed writing.	Must identify the standby guardian, the triggering event or events which standby becomes custodian. ² Designator may also designate alternate.
Minor Objection?	Until the court has confirmed an appointee, a minor who is subject of an appointment by a parent and who is 14 or older can prevent appointment by filing a written objection with the court. ³	
Court Role?	Court can appoint if parental appointee has failed to accept or if appointment has been prevented by the minor. Court shall appoint guardian nominated by minor if over 14, unless contrary to the best interest of the minor.	Must get court approval after petition and filing with court. If triggering event has not occurred, only the designator may file for approval. If triggering event has occurred, standby named in designation may file.
For What Purpose?	Same as parent and must facilitate ward's education and authorize medical care.	
When Takes Effect?	Subject to objection by minor, becomes effective upon the appointing parent's death, an adjudication that parent is incapacitated, or that parent unable to care for the child. Guardian can act upon filing of acceptance which must be 30 days following effective date of appointment.	Takes effect upon occurrence of triggering event and approval of designation by court. (If approval received before triggering event, then authority commences automatically upon occurrence of the triggering event. If designation made but no petition for approval was filed, takes effect upon court approval). Petition

¹ If parent appointed testamentary guardian and there is a conflict between designation in the will and duly executed standby designation, the document latest in date of execution prevails.

² Different standby custodians may be designated for different triggering events.

³ Objection does not preclude an appointment of the appointee by the court.

		must take effect within 60 days of triggering event. ⁴
Compensation?	Guardian is entitled to reasonable compensation and reimbursement.	
How Terminate?	Upon minor's death, adoption, emancipation, attainment of majority, or as ordered by court.	If designator regains capacity, standby's authority becomes inactive.

⁴ Commencement of custodian's authority does not, by itself, divest parent of any parental rights.

MISSISSIPPI

	Testamentary guardian of the person (Miss. Code Ann. §§ 93-13-7 et seq. (2004))	Medical Consent (Miss. Code Ann. §41-41-3 (2004))
Who Can Appoint?	Parent.	Appointment not provided for in statute. Any one of the following persons, who is reasonably available, in descending order of priority, is authorized to consent: a) minor's guardian or custodian b) minor's parent c) adult brother or sister of minor d) minor's grandparent.
How?	Signed writing, or attested by two or more credible witnesses, not including the person appointed as guardian if not written	Can consent orally or otherwise.
Court Appointment?	If no parental designation, then court can appoint. Court may allow a minor over 14 to select a general guardian	
For What Purpose?	Same as parents.	Authorized to consent to surgical or medical treatment or procedures not prohibited by law for minor.
When Takes Effect?	Guardian must appear before court and declare acceptance in writing before exercising any authority.	
How Terminate?	Any guardian may resign or be removed by the court	

MISSOURI

	Testamentary guardian of the person (Mo. Ann. Stat. §§ 475.045 et seq. (West 2004))	Medical Consent (Mo. Ann. Stat. § 431.061 (West 2004))
Who Can Appoint?	Court	Appointment not provided for in statute. In addition to such other persons authorized, the following persons can consent: 1) parent for minor child 2) minor lawfully married 3) any minor for himself in case of pregnancy (but excluding abortions), venereal disease, or drug or substance abuse 4) any adult in loco parentis 5) any guardian of person 6) during absence of parent, adult for minor brother or sister, or grandparent
How?	Court shall appoint person nominated by minor over 14, unless contrary to best interests of the minor or where both parents are dead, any person appointed by the will of the last surviving parent. ¹ If neither applies, court shall appoint most suitable person willing to serve.	Orally or otherwise.
For What Purpose?	Custody and control of ward, including ward's education, support and maintenance.	Authority to consent to surgical or medical treatment or procedures not prohibited by law.
When Takes Effect?		
How Terminate?	When minor becomes 18, upon acceptance by court of resignation of guardian, upon death of minor, upon order of court terminating the guardianship.	

¹ § 475.045 does not specify if person appointed by parent in will has priority over person nominated by minor over 14.

MONTANA

	Testamentary guardian of the person (Mont. Code Ann. §§ 72-5-201 et seq. (2004))
Who Can Appoint?	Parent. ¹ Court under some circumstances.
How?	By will
Minor Objection?	Minor 14 or more may file a written objection to the appointment before it is accepted or within 30 days after notice of its acceptance. ²
Court Role?	Court can appoint upon finding that the testamentary guardian failed to accept or was nullified by minor objection. Court shall appoint person nominated by the minor if minor is over 14 unless the court finds the appointment contrary to the best interests of the minor.
For What Purpose?	Unless otherwise limited by the court, guardian has powers and responsibilities of a parent; shall take care of ward's personal effects; is empowered to facilitate ward's education and consent to medical care.
When Takes Effect?	Upon acceptance of testamentary appointment or if the surviving parent is adjudged incapacitated.
How Terminate?	Guardian's authority terminates upon death, resignation ³ or removal ⁴ of guardian or upon minor's death, adoption, marriage or attainment of majority.

¹ If both parents are dead, an effective appointment by the parent who died later has priority.

² Objection does not preclude appointment by the court of the testamentary nominee.

³Guardian can petition for removal. It does not terminate guardianship until it has been approved by the court.

⁴ Any person interested in the welfare of a ward, or the ward if over 14, may petition for removal of guardian on the ground that it would be in the best interest of the ward.

NEBRASKA

	Testamentary guardian of the person (Neb. Rev. Stat. §§ 30-2605 et seq. (2004))	Standby Guardian (Neb. Rev. Stat. § 30-2608 (2004))
Who Can Appoint?	Parent of unmarried minor. Court under some circumstances.	Court
How?	By will	By appointment for a minor whose parent is chronically ill or near death
Minor Objection?	Minor 14 or older may file a written objection with the court before appointment is accepted or within 30 days after notice of acceptance. ¹	
Court Role?	Court may appoint if the testamentary guardian fails to accept within 30 days or if prevented by minor. Court shall appoint person nominated by minor 14 or older unless contrary to best interest.	Yes, court appoints.
For What Purpose?	Powers and responsibilities of parent, including to take reasonable care of ward's personal effects, facilitate education and authorize medical care.	
When Takes Effect?	Upon acceptance of testamentary appointment or appointment by the court.	Take effect if minor is left without a remaining parent due to death, mental incapacity, or physical debilitation (with consent of parent).
How Terminate?	Terminates upon death, resignation ² or removal ³ of the guardian or upon minor's death, adoption, marriage, or attainment of majority.	

¹ Objection does not preclude appointment by court of the testamentary nominee.

² Resignation does not terminate guardianship until approved by the court.

³ Any person interested in the welfare of the ward, or the ward if 14 or older, may petition for removal of a guardian on the ground that removal would be in the best interest of the ward.

NEVADA

	Testamentary guardian of the person (Nev. Rev. Stat. Ann. 159.044 et. seq. (Michie 2004))	Miscellaneous Medical (Nev. Rev. Stat. Ann. 129.040 (Michie 2004))
Who Can Appoint?	<p>Court</p> <p>Parent can nominate in a will.</p>	<p>Appointment not provided for in statute.</p> <p>Person standing in loco parentis can consent</p>
How?	<p>Court appointment.</p> <p>Guardian nominated in will must file a petition and obtain appointment by the court before exercising the powers of a guardian.</p>	<p>May give consent in emergency if, after reasonable efforts, the parents of the minor cannot be located</p>
For What Purpose?	<p>Guardian has the care, custody and control of ward and shall supply ward with food, clothing, shelter, and incidental necessities including authorizing medical care and seeing that the ward is properly trained and educated.</p>	<p>Authority to consent to minor's emergency hospitalization or medical attention</p>
When Takes Effect?	<p>Takes effect upon taking an oath of office and filing appropriate documents with the court. Guardian must file a bond unless will provides that no bond required.</p>	
How Terminate?	<p>Not specified by statute.</p>	

NEW HAMPSHIRE

	Testamentary guardian of the person (N.H. Rev. Stat. Ann. §§ 463:1 et seq. (2004))
Who Can Appoint?	<p>Court</p> <p>Any person may nominate guardian in a will or by petition.</p>
How?	<p>Court may appoint guardian in the best interests of the minor and can refuse to appoint a person nominated in a will or by petition.</p>
For What Purpose?	<p>Guardian has powers and responsibilities of a parent regarding minor's support, care, and education, including power to consent to medical treatment.¹</p>
When Takes Effect?	<p>Not specified by statute.</p>
How Terminate?	<p>Any person appointed as guardian shall serve until resignation accepted by the court, removal by the court for cause, death of the guardian, death of minor, minor's 18th birthday, or minor's adoption.</p>

¹ Status of minors for whom guardianship has been granted shall be reviewed by court at 6, 12, and 24 months, and annually thereafter, except court may waive all reviews after 24-month review upon good cause shown.

NEW JERSEY

	Testamentary guardian of the person (N.J. Stat. Ann. §§ 3B: 12-13 et seq. (West 2005))	Standby Guardian (N.J. Stat. Ann. §§ 3B: 12-67 et seq. (West 2005))
Who Can Appoint?	Parent ¹	Court
How?	By will	Upon petition of the parent or guardian. Petition shall state which triggering event shall cause the authority of the standby guardian to become effective, that there is a significant risk that the parent will die, become incapacitated, or debilitated, and the name of the proposed standby guardian. Parent can also choose standby guardian by means of a written designation. ²
For What Purpose?	Not specified by statute.	Not specified by statute.
When Takes Effect?	Effective after posting bond with court (unless relieved from doing so by direction of will).	Upon occurrence of a triggering event set forth in decree appointing the standby, the standby is empowered to assume the duties of his office immediately. Standby must petition for court confirmation within 60 days.
How Terminate?	Not specified by statute.	In the case of parental designation, the designation shall expire 6 months from the date of the written designation unless a petition for judicial appointment is made.

¹ Where parent appoints, and the other parent survives the appointing parent, the appointment shall be effective only when surviving parent consents.

² § 3B: 12-74 includes a “Designation of Standby Guardian” form.

NEW MEXICO

	Testamentary guardian of the person (N.M. Stat. Ann. §§ 45-5-201 et seq. (Michie 2004))	Miscellaneous Medical (N.M. Stat. Ann. § 24-10-2 (Michie 2004))
Who Can Appoint?	Parent. Court under some circumstances.	Appointment not provided for in statute.
How?	Parent may appoint by will or other signed writing. ¹	In cases of emergency and when parents cannot be located, consent for emergency attention may be given by any person standing in loco parent is to the minor.
Minor Objection?	Minor 14 or older who is subject to parental appointment may file a written objection to the appointment before acceptance or after its acceptance. ²	
Court Role?	Court can proceed with another appointment if parental nominee has failed to accept within 30 days or if prevented by minor. Court shall appoint person nominated by minor 14 or older unless contrary to best interest of minor.	
For What Purpose?	Guardian has powers and responsibilities of a parent regarding ward's support, care and education, and can consent to medical care.	Authority to consent to emergency medical attention or surgery.
When Takes Effect?	When guardian files acceptance in court.	
How Terminate?	Terminates upon death, resignation ³ or removal ⁴ of guardian or upon minor's death, adoption, marriage or attainment of the majority.	

¹ If both parents are dead, an effective appointment by the parent who died later has priority.

² Objection does not prevent appointment by the court of the parental nominee or any other suitable person.

³ Resignation does not terminate guardianship until approved by the court.

⁴ Any person interested in the welfare of a ward, or the ward if 14 or over, may petition for removal of guardian on the ground that removal would be in the best interest of the ward.

NEW YORK

	Testamentary guardian of the person (N.Y. Surr. Ct. Proc. Act Law §§ 1710 et seq. (Consol. 2005))	Standby Guardian (N.Y. Surr. Ct. Proc. Act Law § 1726 (Consol. 2005))	Medical Consent (N.Y. Pub. Health Law § 2504 (Consol. 2005))
Who Can Appoint?	Court	Court appoints; petition or written designation can be made only by a parent.	Parent or guardian
How?	Parent can appoint by will but it is not effective until will has been recorded in court and court issues letters of guardianship. Where will is not recorded with the court within 3 months of qualifying as guardian, court can appoint.	Petition shall state when the authority of standby guardian is to become effective (upon petitioner’s incapacity, death, consent, or whichever occurs first); state that the petitioner suffers from a chronic illness. Court shall make appointment. OR Parent can designate standby guardian in written designation. Standby must file a petition for appointment with the court when authority becomes effective. ¹ Court will appoint if it finds petitioner was duly designated as standby.	Can give written consent to any person
For What Purpose?	Not specified by statute.	Not specified by statute.	Authority to consent to immunization of child, except where he/she has reason to believe that parent objects to immunization.
When Takes Effect?	When letters of guardianship have been issued.	Court decree states when authority of the standby guardian is effective.	Upon consent.
How Terminate?	Not specified by statute.	Not specified by statute.	Not specified by statute.

¹ § 1726 includes a “Designation of Standby Guardian” form.

NORTH CAROLINA

	Testamentary guardian of the person (N.C. Gen. Stat. §§ 35A-1213 et seq. (2004))	Standby Guardian (N.C. Gen. Stat. §§ 35A-1370 et seq. (2004))	Education Consent (N.C. Gen. Stat. § 115C-366 (2004))	Medical Consent (N.C. Gen. Stat. § 32A-34 (2004))
Who Can Appoint?	Court	Court	Appointment not provided for in the statute.	Parent
How?	Recommendation of parent in a will is a strong guide, but court not required to follow if not in best interest of minor.	By petition or designation. Petition shall state that the authority of the standby guardian is to become effective upon the death, incapacity or debilitation of petitioner, and that the petitioner suffers from a chronic illness. Designation shall identify person designated as standby guardian, indicate when guardianship becomes effective.	A student who is not a domiciliary of a local school district may attend if the student resides with an adult who is a domiciliary as a result of death, serious illness, incarceration of parent or legal guardian. Adult must sign affidavit that attests that student's claim of residency is not primarily related to attendance at a particular school district.	Written consent using "Authorization to Consent to Health Care for Minor" form
For What Purpose?	Guardian shall make provision for ward's care, comfort and maintenance and may give consent to medical treatment.	Guardian shall make provision for ward's care, comfort and maintenance and may give consent to medical treatment	Adult that minor is living with must accept responsibility for educational decisions for the child, including receiving notices of discipline, attending conferences with school personnel, grant permission to school related activities.	Authorization to consent to health care for minor.
When Takes Effect?	Not specified by statute.	Takes effect upon determination of incapacity of petitioner. Guardian must file with court within 90 days or		

		authority will be rescinded. ¹		
How Terminate?	Upon court removal, resignation, when ward ceases to be a minor, or dies.	If designator is subsequently restored to capacity or ability to care for child; if minor reaches 18, court revocation, resignation.		

¹ Commencement of standby guardian's authority confers concurrent authority upon the standby guardian.

NORTH DAKOTA

	Testamentary guardian of the person (N.D. Cent. Code §§ 30.1-27-01 et seq. (2005))	Miscellaneous Medical (N.D. Cent. Code §23-12-13 (2005))
Who Can Appoint?	Parent. Court under some circumstances.	Appointment not provided for in statute. Persons in the following order of priority may provide informed consent care on behalf of minor: <ol style="list-style-type: none"> 1) Parent, including stepparent who has maintained sufficient contact w/ minor or appointed guardian 2) Adult brothers and sisters 3) Grandparents 4) Close relative who has maintained sufficient contact
How?	Parent may appoint by will.	Before consenting person must determine that proposed health care is in patient's best interests.
Minor Objection?	Minor 14 or older may file objection with the court before or within 30 days of acceptance. ¹	
Court Role?	Court can appoint if testamentary guardian failed to accept within 30 days or if prevented by minor. Court shall appoint guardian nominated by minor over 14 unless contrary to best interest of minor.	
For What Purpose?	Guardian must take reasonable care of ward's personal effects, facilitate ward's education, and can authorize medical care.	Authorized to consent to health care for minor.
When Takes Effect?	Upon acceptance of a testamentary appointment or upon appointment by the court	
How Terminate?	Upon death, resignation ² or removal ³ of guardian, or upon the minor's death, adoption, marriage, or attainment of the majority.	

¹ Objection does not preclude appointment by the court of the testamentary nominee.

² Resignation does not terminate guardianship until it has been approved by the court.

³ Any person interested in welfare of ward, or the ward if 14 or more, may petition for removal of a guardian on the ground that removal would be in the best interest of the ward.

OHIO

	Testamentary guardian of the person (Ohio Rev. Code Ann. §§ 2111.01 et seq. (Anderson 2005))	Education Consent (Ohio Rev. Code Ann. § 3313.64(11) (Anderson 2005))
Who Can Appoint?	Court	Appointment not provided for in statute. Child in custody of child's parent and residents with a grandparent is entitled to attend the schools in the district where grandparent resides.
How?	Minor over 14 may select a guardian who shall be appointed if suitable. Parent can select guardian in will. Court may appoint person named in will, person selected by minor or some other person.	Parent must enter into written agreement specifying that good cause exists for attendance and consenting to attendance.
For What Purpose?	Guardian has custody and maintenance of ward, charge of education, and can consent to medical care.	
When Takes Effect?	Upon court appointment.	
How Terminate?	Not specified by statute.	

OKLAHOMA

	Testamentary guardian of the person (Okla. Stat. Ann. tit. 30, §§ 2-101 et seq. (West 2004))	Education Consent (Okla. Stat. Ann. tit. 70, § 1-113 (West 2004))	Medical Consent (Okla. Stat. An.. tit. 10, § 170.1 (West 2004))
Who Can Appoint?	Court	Appointment not provided for in statute.	Parent or legal guardian
How?	Guardian may be nominated by will; minor 14 or over may nominate own guardian. Court can appoint guardian if it doesn't approve minor's nominee.	Residence of minor is school district in which parent or guardian holds legal residence. School has discretion to allow establishment of residency by affidavit when adult has assumed care and custody of child but does not have legal custody. ¹	Parent can authorize, in writing, any adult person into whose care the minor has been entrusted to consent to medical care.
For What Purpose?	Guardian shall have charge of education of minor. Court may also authorize guardian to provide for the care, treatment, and education of the minor.	Purpose of minor attending public school.	Consent to: x-ray examination, anesthetic, medical, surgical, or dental diagnosis/treatment, hospital care, or immunization, blood tests, and examinations to be rendered to minor.
When Takes Effect?	Upon appointment		
How Terminate?	Removal of the guardian; marriage of ward; ward attaining majority		

¹ § 1-113(A) also addresses residence in foster home, orphanage, emergency shelter, etc.

OREGON

	Testamentary guardian of the person (Or. Rev. Stat. §§ 125.200 et seq. (2003))
Who Can Appoint?	Court
How?	Shall appoint most suitable person willing to serve, considering minor's preference, relationship by blood or marriage of person nominated, any preference expressed by minor's parent.
For What Purpose?	Same as parent, including health care, comfort, maintenance, and education of minor.
When Takes Effect?	After guardian files acceptance with the court and court issues of letters of guardianship.
How Terminate?	When minor reached 18, or court may remove if in minor's best interests.

PENNSYLVANIA

	Testamentary guardian of the person (20 Pa. Cons. Stat. §§ 2519, 5111 et seq. (2004))	Standby Guardian (23 Pa. Cons. Stat. §§ 5602 et seq. (2004))	Medical Consent (11 Pa. Cons. Stat. § 2513 (2004))
Who Can Appoint?	Court	Court	Parent or legal guardian of a minor
How?	Parental selection in a will creates a presumption in favor of that person. Person of same religious persuasion as parents of minor is preferred. Person nominated by minor over 14 if suitable shall be preferred	Upon petition for appointment. Parent may designation standby guardian and triggering events upon which the standby shall become guardian. ¹ Petition for court appointment of designation may be made at any time (before or after triggering event). ²	Can confer upon any adult person the power to consent to medical care to the minor. § 2513 includes a “Medical Consent Authorization” form.
For What Purpose?	Not specified by statute.	Standby has authority of parent. Commencement of standby guardian’s authority does not itself divest parent of guardianship rights.	Consent to medical or mental health treatment
When Takes Effect?	Not specified by statute.	If petition filed and approved before triggering event, standby authority commences upon occurrence of triggering event. If designation has been made, but petition has not been filed, the standby has temporary authority to act as guardian of minor for 60 days and must file for approval within that time.	
How Terminate	Not specified by statute.	Not specified by statute.	

¹ § 5611 includes a designation form.

² If parent has appointed a testamentary guardian and there is a conflict between that will and written standby designation, the document latest in date of execution shall prevail.

RHODE ISLAND

	Testamentary guardian of the person (R.I. Gen. Laws §§ 33-5-4, 33-15.1-1 et seq. (2004))
Who Can Appoint?	Court
How?	<p>Minor 14 or over may nominate his/her own guardian and court shall appoint if approved. If minor over 14 does not choose guardian or chooses one whom the court does not approve, then the court may appoint. Court may appoint guardian for minor under 14.</p> <p>Parent can make selection by will that court will approve, unless there is a good cause not to do so.</p>
For What Purpose?	Same as parent, including power to make decisions regarding education of minor.
When Takes Effect?	Court approval. ¹
Compensation?	Court may authorize guardian to receive reasonable compensation for his/her services.
How Terminate?	Court may remove any guardian for absence, sickness, insanity, or other cause. Guardian may resign.

¹ The court can appoint a temporary guardian pending approval of the permanent guardian.

SOUTH CAROLINA

	Testamentary guardian of the person (S.C. Code Ann. §§ 62-5-301 et seq. (Law. Co-op. 2004))	Education Consent (S.C. Code Ann. § 59-63-32 (Law. Co-op. 2004))
Who Can Appoint?	Court	Appointment not provided for in statute.
How?	Parent can appoint by will but is subject to approval by court.	School district must require adult seeking to enroll child in public school to: accept responsibility for education decisions concerning child, attest that child's claim of residency is not primarily related to attendance at particular school within district.
Minor Objection?	Can file a written objection to the appointment. ¹	
For What Purpose?	Same powers, rights, duties as parent, including consenting to medical treatment.	Education decisions include: receiving notices of discipline, attending conferences with school staff, granting permission for school activities.
When Takes Effect?	Effective when guardian files acceptance with court.	
How Terminate?	Upon death of the guardian, determination of incapacity of the guardian, or upon removal ² or resignation.	

¹ Objection does not prevent appointment by the court of the testamentary nominee or any other suitable person.

² On petition of the ward or any person interested in his/her welfare, the court may remove a guardian and appoint a successor.

SOUTH DAKOTA

	Testamentary guardian of the person (S.D. Codified Laws §§ 29A-5-201 et seq. (Michie 2003))
Who Can Appoint?	Court; Parent and/or minor over 14 may nominate.
How?	<p>Minor 14 or older may nominate any individual to act as his/her guardian. Court may appoint the nominee if otherwise eligible to act. Parent of unmarried minor may nominate guardian by will or other signed writing.¹ Absent an effective nomination by minor, court may appoint parental nominee.</p> <p>Absent an effective nomination, court shall appoint person that will act in minor's best interest. Court shall consider guardian's geographic location, familial or other relationship with minor, ability to carry out powers of the office, commitment to promoting minor's welfare, any potential conflicts of interest, recommendations of parents or other relatives, and wishes of minor if of sufficient age to form an intelligent preference.</p>
For What Purpose?	Guardian responsible for making decisions regarding minor's support, care, health, education, and act at all times in minor's best interest.
When Takes Effect?	Court must order appointment and guardian must file acceptance.
How Terminate?	Upon death, resignation ² or removal ³ of the guardian, or upon minor's death or attainment of majority.

¹ In the event that both parents are dead and both made nominations, the court shall select the nominee which it believes best qualified.

² Guardian may petition for permission to resign; court may not grant permission unless there is a suitable successor willing to act, except for good cause shown.

³ Court may remove upon petition by any interested person or on the court's own motion.

TENNESSEE

	Testamentary guardian of the person (Tenn. Code Ann. §§ 34-1-101 et seq. (2004))
Who Can Appoint?	Court
How?	Court determines what is in the best interests of the minor, with preference given to: 1) person designated by parent in will or other written document; 2) adult siblings; 3) closest relative of minor; 4) other persons.
For What Purpose?	Not specified by statute.
When Takes Effect?	After court order, guardian must take oath.
How Terminate?	When minor reaches 18 years of age.

TEXAS

	Testamentary guardian of the person (Tex. Prob. Code § 676 et seq. (Vernon 2004))	Medical Consent (Tex. Fam. Code § 32.002, 32.101 (Vernon 2004))
Who Can Appoint?	Court	<p>Appointment not provided for in statute.</p> <p>Guardian of child can consent to immunization of child</p> <p>If guardian not available and authority to consent not denied then consent can be given by: grandparent, adult brother or sister, adult aunt or uncle, stepparent, education institution where child is enrolled if have written authorization, another adult who has possession of child and written authorization.</p> <p>Person otherwise authorized to consent may not consent if the person has actual knowledge that a parent has expressly refused to give consent or withdrawn written authorization for the person to consent.</p>
How?	Court will appoint person nominated in will, unless not in minor's best interest. ¹ If no such nominees, then court will appoint the nearest ascendant in the direct line of the minor is entitled to guardianship, then the nearest of kin, ² and then, if no relative is eligible or no eligible person applies, the court shall appoint a qualified person. ³	Consent must include name of child, name of parents, name of person giving consent and person's relationship to child, statement of nature of medical treatment/immunization to be given, and date treatment/immunization to begin
Selection by Minor?	Minor 12 or older may choose the guardian, if the court finds that the choice is in the best interest of the minor. If guardian appointed by court dies, resigns, or is removed, minor over 12 can make selection in that case also.	
For What Purpose?	Physical possession, care, continued protection of minor and medical care consent.	Authority to consent to immunization of minor.
When Takes Effect?	Court order and guardian taking oath.	

¹ § 677A provides a sample written declaration for parental appointment of guardian.

² It is presumed not to be in the best interests of a ward to appoint a person as guardian if the person has been convicted of any sexual offense, sexual assault, aggravated assault, injury to a child, etc.

³ This section only applies if minor is younger than 12, or if over 12, has not selected a guardian.

How Terminate?	If guardian appointed solely because of incapacity of minor's surviving parent, the guardian's powers terminate upon finding that parent is no longer incapacitated. Terminates when minor dies, is no longer a minor.	
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UTAH

	Testamentary guardian of the person (Utah Code Ann. §§ 75-5-201 et seq. (2005))	Medical Consent (Utah Code Ann. § 78-14-5 (2005))
Who Can Appoint?	Parent.	Appointment not provided for in statute.
How?	By will or other written instrument	The following persons can consent to health care: 1) parent for minor child 2) any person temporarily standing in loco parentis, whether formally serving or not for the minor under his care 3) in absence of a parent, any adult for his minor brother or sister 4) in absence of parent any grandparent for minor grandchild. ¹
Minor Objection?	Minor over 14 can file a written objection to testamentary appointment before it is accepted or within 30 days of notice of acceptance. ²	
Court Appointment?	Court may appoint if all parental rights have been terminated. Guardian appointed by will has priority over any guardian appointed by court, but court may proceed with appointment upon finding that testamentary guardian failed to accept or minor over 14 prevented appointment. Court must appoint guardian in best interests of minor, taking into account the minor's physical, mental, moral, and emotional health needs.	
For What Purpose?	Guardian has powers and responsibilities of a parent; is empowered to facilitate ward's education and authorize medical care.	Any health care not prohibited by law.
When Takes Effect?	When the guardian files acceptance in court or upon appointment by the court	
How Terminate?	Terminates upon death, resignation ³ , or removal ⁴ of the guardian or upon minor's death, adoption, marriage, or attainment of	

¹ This list only contains those relevant to authorization for the care of a minor (§ 78-14-5 lists other persons authorized to consent).

² Objection does not preclude appointment by the court of the testamentary nominee or any other suitable person.

³ Resignation of guardian does not terminate guardianship until approved by the court.

⁴ Any person interested in welfare of ward, or ward if 14 or over, may petition for removal of guardian on the ground that removal would be in the best interest of the ward.

	majority.	
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VERMONT

	Testamentary guardian of the person (Vt. Stat. Ann. tit. 14, §§ 2645 et seq. (2004))
Who Can Appoint?	<p>Court</p> <p>Parent can appoint by will.</p>
How?	<p>On petition of minor or person interested in welfare of minor, court may appoint: 1) when minor has no living parent 2) when parent is incompetent 3) when no parent objects and transfer is in best interest of minor and is not solely for purpose of establishing residence for school purposes.</p>
Minor Nomination?	<p>Minor 14 or over may choose guardian subject to approval of the court. If minor fails to choose, court will appoint. When person appointed guardian by court, minor may choose to have another appointed after turning 14.</p>
For What Purpose?	<p>Custody and “tuition” of minor.</p>
When Takes Effect?	<p>Not specified by statute.</p>
How Terminate?	<p>When the minor marries or reaches the age of majority.</p>

VIRGINIA

	Testamentary guardian of the person (Va. Code Ann. §§ 31-2 et seq. (Michie 2004))	Miscellaneous Medical (Va. Code Ann. § 54.1-2969 (Michie 2004))
Who Can Appoint?	Parent. Court under some circumstances.	Appointment not provided for.
How?	Will	When minor separated from custody of parent and is need of medical treatment, authority to give consent is conferred upon: judges whose custody is within control of court, local director of social services in some cases, any person standing in loco parentis. When consent of parent of minor is unobtainable because whereabouts is unknown, authority to give consent to treatment is conferred upon judges of the juvenile.
Court Role?	If minor is under 14, court may nominate and appoint his/her guardian. If minor is over 14, he/she may nominate guardian and if approved shall be appointed by the court. In no case shall any person not related to minor be appointed until 30 days have elapsed since death or disqualification or natural or testamentary guardians, and the next of kin have had opportunity to petition court for appointment.	
For What Purpose?	Custody.	Consent to surgical or medical treatment.
When Takes Effect?	Upon guardian filing acceptance.	
How Terminate?	Unless guardian dies, is removed or resigns, he/she shall continue until minor is 18.	

WASHINGTON

	Testamentary guardian of the person (Wash. Rev. Code §§ 11.88.080 et seq. (2005))	Standby Guardian (Wash. Rev. Code § 11.88.125 (2005))
Who Can Appoint?	Parent	Parent
How?	Will Court shall confirm parent's testamentary appointment unless court finds that individual appointed is not qualified to serve.	File notice with court designating standby guardian.
For What Purpose?	Not specified by statute.	Powers, duties, obligations of a regularly appointed guardian, including to consent to medical procedures.
When Takes Effect?	Guardian must take oath.	Upon court issuing letters of guardianship and standby guardian filing oath.
How Terminate?	Upon minor's attainment of legal age, death	Not specified by statute.

WEST VIRGINIA

	Testamentary guardian of the person (W. Va. Code §§ 44-10-1 et seq., 44A-2-1a et seq. (2005))	Standby Guardian (W. Va. Code §§ 44A-5-1 et seq. (2005))
Who Can Appoint?	Parent. ¹	Court
How?	Will	<p>Upon parental designation or petition.</p> <p>Parent or any person acting on parent's behalf may file petition including name of proposed standby guardian, nature of triggering event, and whether there is a significant risk that parent will die or become incapable of caring for minor imminently.²</p> <p>Parent can make written designation for standby guardian naming triggering event and person to be designated.</p> <p>Standby must file with court no later than 30 days following parent's death in either case. Court shall enter order approving designated/petitioned guardian.</p>
Minor Nomination?	Minor over 14 can, in writing, nominate his/her own guardian which must be approved by court.	
For What Purpose?	Guardian responsible for making decisions and obtaining provision for minor's support, care, health, habilitation, education, etc.	
When Takes Effect?	Guardian must accept in court.	Upon occurrence of stated triggering event. ³

¹ Where both father and mother have appointed guardians, only that guardian who is the appointee of the parent last living shall be entitled to custody.

² Not a complete list of requirements for petition.

³ If triggering event was death of parent, standby shall file petition for appointment of a guardian for child within 90 days of death.

Review of appointment?		Child's parent or any person related to child by blood or marriage may petition court for review of whether continuation of standby guardian is in the best interest of the child.
How Terminate?	Until minor turns 18, or upon death, resignation or removal of guardian.	

WISCONSIN

	Testamentary guardian of the person (Wis. Stat. §§ 880.01 et seq. (2004))	Standby Guardian (Wis. Stat. § 48-978 (2004))
Who Can Appoint?	Court	Court
How?	Court shall consider nominations made by interested persons and shall appoint a guardian, having due regard for the following: 1) nomination by minor over 14 2) nomination made in will by parent	Upon petition for appointment by both parents. ¹ If a parent cannot locate other parent, then parent can file without other parent joining in petition. If a parent can locate the other parent, but that other parent refuses to join petition, parent may file and submit proof to court of refusal. Petition must include name of person nominated, a statement of when the duty becomes effective, and statement that there is significant risk that petitioner will become incapacitated or die within 2 years after date petition is filed. OR Parent can make written designation of guardian
For What Purpose?	Not specified by statute.	Petition shall state the duties and authority that petitioner wishes standby to exercise.
When Takes Effect?	Not specified by statute.	Written designation takes effect when standby files a petition and is appointed by the court. Petition previously approved by court takes effect upon determination of incapacity or death of parent.
How Terminate?	Guardianship shall terminate when minor: 1) reaches majority (unless minor is incompetent), or 2) lawfully marries	

¹ Petition can include alternate standby for court to appoint if the person nominated as standby guardian is unwilling or unable to serve as the child's guardian or if court determines appointment of person nominated is not in best interests of child.

WYOMING

	Testamentary guardian of the person (Wyo. Stat. Ann. §§ 3-2-101 et seq. (Michie 2004))	Standby Guardian (Wyo. Stat. Ann. § 3-2-108 (Michie 2004))
Who Can Appoint?	Court	Court
How?	Any person may file a petition for appointment of a guardian. Court gives priority to: 1) person nominated as guardian in will of parent; 2) person requested by minor who has reached 14; and 3) any other person whose appointment would be in best interests of minor.	Petition filed
For What Purpose?	Determine residence for ward; facilitate ward's education, social and other activities; authorize medical care, etc.	Guardian shall present and file report on activities of the ward every 6 months. Determine residence for ward; facilitate ward's education, social and other activities; authorize medical care, etc.
When Takes Effect?	Not specified by statute.	Not specified by statute
How Terminate?	Not specified by statute	Not specified by statute