

Explanation of the “Adult Protective Services Agency Authority to Act as Guardian of a Client: Guidance and Provisions from Adult Protective Services Laws, by State” Chart
(Laws current as of 12/31/06)

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The chart addresses the adult protective services (APS) laws for each state, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands. This explanation and the chart refer to these jurisdictions generically as “state” or “states.”

Unless otherwise indicated, this explanation (1) uses the term “abuse” generally to include abuse, neglect, and exploitation, and (2) uses “elder abuse” to include elder abuse and adult abuse.

CAUTION: This chart is based only on the state APS laws; APS regulations were not reviewed. It is important to recognize that there may be other state laws or regulations or federal laws or regulations that address the issue covered by this chart.

NOTE: A few states have multiple laws. Some of those states have separate elder protective services (EPS) laws and APS laws, and those laws are designated in the chart by following the state abbreviation with “EPS” or “APS”. Some states have more than one APS law, and those laws are designated in the chart by following the state abbreviation with #1 or #2. Unless otherwise indicated in this explanation or the chart, both APS and EPS laws will generally be referred to as APS laws.

I. Why We Developed This Chart

This chart addresses the issue of whether an APS agency may act as the guardian of a client. (Although state terminology varies, the chart and this explanation use the term “guardian” generally to encompass the concepts of a guardian of the person or guardian of the property, often called “conservator,” unless otherwise indicated). This raises concerns about conflict of interest. As an agency that receives and investigates reports of suspected elder abuse, APS may be called upon to investigate allegations that a guardian abused, neglected, or exploited the incapacitated person for whom he or she acts as surrogate decision-maker. If an APS agency serves as guardian for its clients, it will face a conflict of interest if such allegations are raised against the agency. Additionally, staff members who act as guardians of agency clients face a conflict of interest if they need to advocate within their own agency for additional resources for the incapacitated people they are serving. As a result, many states prohibit APS agencies from acting as guardian for program clients or limit the agency to serving as a temporary guardian until a non-agency guardian can be appointed. A number of states provide no guidance on this issue, and a few allow it without restriction.

State and federal legislative staff, other policy makers, program administrators, practitioners, educators, researchers, reporters, and others often want to know how many states have laws allowing an APS agency to act as a guardian and what those laws say. The “Adult Protective Services Agency Authority to Act as Guardian of a Client: Guidance and Provisions from Adult Protective Services Laws, by State” chart offers that information.

II. Detailed Explanation of the “Adult Protective Services Agency Authority to Act as Guardian of a Client: Guidance and Provisions from Adult Protective Services Laws, by State” Chart

This chart contains the following three columns:

1. State. All states are included.
2. APS Authorized to Act as Guardian of a Client? This column indicates the answer to that question. Generally, the answers are “yes,” “no,” or “no provision.” If a state has a limitation on the authority granted or an explanation of our interpretation is necessary, that limitation or explanation is provided. For example, some states allow an APS agency to act only as a temporary guardian or temporary conservator.
3. Statutory Provision and Citation. The pertinent statutory provision(s) and citation(s) governing whether an APS agency may act as guardian of its clients are presented in this column. Except for words within brackets, the provisions are copied verbatim from the state laws. If a state law contains multiple relevant provisions, all are included and they are separated by a line. A citation is provided for each provision.

III. If You Find an Error

We strived to be consistent in our interpretation and categorization of the statutes. Despite our best efforts, we may have made errors. It is also possible that APS or other professionals interpret a statute differently than we did or there are state regulations or policies that lead to a different interpretation. Additionally, state laws may have changed since December 31, 2006. If you think we erred or your state has a regulation or policy that leads to a different interpretation, please contact Lori Stiegel of the American Bar Association Commission on Law and Aging at lstiegel@staff.abanet.org or 202-662-8692.

¹ The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.

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