

Guardianship by Country:
Resource for Second World Congress on Adult Guardianship

| |
|---|
|  Country: Switzerland Population: 8 million Number of people under Adult Guardian/Guardianship: approximately 80,000 |
| Relevant legislation Swiss Civil Code of December 1907 |
| Key terminology Guardianship Welfare advocate Legal adviser |
| What types of guardianship exist? (personal welfare/financial affairs) Both welfare advocates and guardians have responsibility for protecting the person's financial interests and their personal welfare, with a stronger practical focus on financial matters. The difference between welfare advocates, legal advisers and guardians is seen in the level of legal capacity the person under protection retains, with a person under guardianship retaining only the capacity for strictly personal rights like consent to marriage or an operation. |
| Aside from personal appointments, who has the power to appoint an adult guardian? The guardianship authority: a tribunal or executive authority whose responsibilities are set out in cantonal (district) law. |
| What eligibility criteria need to be met? If any of the following criteria are met, the relevant authority must appoint a guardian for any adult who: <ul style="list-style-type: none"> - is unable to manage their own affairs as a result of mental illness or learning disabilities (where expert opinion supports this option) - is in constant need of care and assistance for their own welfare - poses a threat to the safety of others - exposes themselves or their family to the risk of hardship or poverty through profligacy, alcoholism, a disreputable lifestyle or mismanagement of property - is sentenced to a custodial sentence of one year or longer - requests a guardian and is able to show that they are unable to manage their affairs properly as a result of senility or some other infirmity or because of inexperience Welfare advocates may also be appointed in a limited number of special circumstances, including where the whereabouts of a person are unknown and there are decisions that need to be made. |
| What is the potential duration of an order? Normally, the guardianship order has to be reviewed by the court and the guardian (including welfare advocates or legal advisers) have to be re-appointed every two years. |
| Can a person under guardianship seek review of a guardian's appointment and/or a guardian's decisions? Yes, through appeal to the guardianship authority on their own behalf or by employing a lawyer to act for them. |
| Who can be appointed as guardian? (eg family members, private guardian, private body, |

public body)

There are no legal restrictions, however the guardian has to be able to defend the objective interests of the protected person. Where there is a conflict of interest family members are not appointed as guardians, however they have to be considered as candidates. Difficult cases are mostly given to professional guardians (social assistants or lawyers employed at a social service).

What are the responsibilities of an adult guardian? (eg what principles or guidelines must they comply with)

While not specifically legislated, it is understood that a guardian should defend the objective interests of the protected person, show respect for the protected person, engage in proportional and trustworthy handling of guardianship matters and employ their professional expertise where relevant.

In a specified range of matters, including moving to new accommodations, the guardian must seek the consent of the guardianship authority before acting.

How are adult guardians monitored and/or supported? (eg overseeing body, support for volunteer guardians)

In the majority of cases, the guardian is required to report to the guardianship authority every two years. They are required to report on the whole situation of the protected person including whether guardianship is still required, relevant changes of circumstance or major events including marriage or medical procedures. If they also hold responsibility for the person's financial decisions they must report on income and expenditures for the period.

Professional guardians are monitored and supported by the social service organisations by whom they are employed. There are also training and professional development opportunities at specialised schools and conferences.

Does an existing enduring Power of Attorney (personal welfare/financial) remove the need for guardianship when capacity is lost?

No, there is no enduring or continuing Power of Attorney. In Switzerland, a Power of Attorney must be controlled by a person who has capacity.

What costs are associated with guardianship and who pays? (eg application costs, court costs, yearly service fees)

If the protected person has the financial means, they meet the costs of guardianship. If the protected person is poor, the community generally pays the yearly service fees for private guardians of around CHF 1,500. The community is normally charged for the application costs and the costs of the authorities.

Additional comments (Interesting elements of your country's system than are not covered above)

Guardianship laws will be overhauled in 2013. Also, existing district based guardianship authorities will be centralised (about 1 authority for 50,000 inhabitants). The aim is increase the professionalism of the guardianship authorities.