Guardianship (For Healthcare Facilities)

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Overview

A resident needs surgery, but no health care proxy exists, and no family member holds legal authority to consent. The facility's clinical team knows what the patient needs. Without a court-appointed guardian, that knowledge cannot translate into action.

Facilities sometimes assume that a family member's informal agreement is enough to authorize treatment. It is not. Verbal consent from a relative without legal standing does not satisfy Massachusetts informed consent requirements, and "the family said it was okay" will not shield a nursing home or SNF from liability if that decision is later challenged.

Cohen Cleary represents skilled nursing facilities, assisted living residences, and healthcare providers in petitioning the Probate and Family Court for guardianship over incapacitated residents. We understand the urgency these situations create and the regulatory framework facilities must navigate to ensure residents receive timely, legally authorized care.

How We Help: Guardianship Petitions for Healthcare Facilities

Guardianship authorizes a court-appointed individual to make personal and healthcare decisions for someone who lacks the capacity to do so. Unlike conservatorship, which addresses financial management, guardianship governs medical treatment, residential placement, and day-to-day care.

For nursing homes and other healthcare facilities, the most common trigger is a resident who requires medical intervention but has no health care proxy, no activated power of attorney, and no available family.

Our attorneys prepare and file the petition, coordinate with facility medical staff to develop the clinical team report required under Massachusetts law, and present the case in Probate Court. For residents who require antipsychotic medication or other extraordinary treatment, we pursue Rogers guardianship authorization, which involves a separate judicial determination that the proposed treatment plan is in the patient's best interest.

When a care decision cannot wait for the standard guardianship timeline, we file for temporary or emergency guardianship to secure interim decision-making authority. Each petition is structured to reflect the clinical realities documented by the facility's treatment team.

Why Healthcare Facilities Choose Cohen Cleary

At Cohen Cleary, our practice teams combine deep subject-matter experience with disciplined execution and responsive client service. We do not take a one-size-fits-all approach. Every matter is handled with careful preparation, clear communication, and a strategy tailored to the

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client's goals and the realities of the forum.

Clients choose Cohen Cleary because we deliver:

Practice-Focused Legal Experience

Our attorneys work in defined practice areas, allowing us to develop practical insight into the legal, procedural, and regulatory nuances that matter most in each case. This focus allows us to anticipate issues, avoid unnecessary delays, and position matters for efficient resolution.

Clear Guidance and Proactive Communication

We prioritize clarity at every stage. Clients receive straightforward explanations of their options, timely updates on developments, and practical advice grounded in real-world outcomes.

Strategic Advocacy with Trial Readiness

Whether a matter calls for negotiation, mediation, or litigation, our attorneys prepare every case with discipline and foresight. We pursue efficient resolution when possible and are fully prepared to advocate aggressively when necessary to protect our clients' interests.

Regional Knowledge and Local Presence

With offices throughout Massachusetts and experience across New England courts and agencies, we bring local insight and regional reach to every matter.

Client-Centered Service

We treat every matter with urgency and respect. Our clients rely on us for responsive service, sound judgment, and steady counsel through complex legal challenges.

In our healthcare guardianship work, this approach helps facility clients move from clinical need to court authorization with clarity, efficiency, and confidence.

Our Approach to Facility-Initiated Guardianship

Our guardianship practice for healthcare facilities is built around the specific demands of facility-initiated proceedings:

- Preparation of petitions supported by the clinical team report required under Massachusetts law, documenting the resident's diagnosis, functional limitations, and treatment needs
- Coordination with facility physicians, nursing staff, and social workers to ensure clinical documentation aligns with Probate Court evidentiary standards
- Pursuit of Rogers guardianship authorization when residents require antipsychotic medications or other extraordinary treatment that cannot be administered under standard guardian authority
- Filing for emergency or temporary guardianship when care decisions cannot safely wait for standard court timelines

We also advise facilities on developing internal protocols for identifying residents who may need a guardian, and we counsel appointed guardians on their ongoing reporting obligations to the court.

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Providing Healthcare Guardianship Across New England

Cohen Cleary represents healthcare facilities in guardianship proceedings across New England, with concentrated practice in Massachusetts, Rhode Island, Connecticut, and Maine. Our attorneys appear regularly in Probate and Family Courts throughout these states and understand the procedural variations that affect filing strategy, clinical team report requirements, and hearing timelines.

For facilities operating multiple locations across New England, we provide consistent representation without engaging separate local counsel for each campus, coordinating guardianship and conservatorship matters across your facility portfolio while maintaining familiarity with each court's expectations.

Our offices in Taunton and Plymouth serve as the foundation for this practice, and our attorneys maintain active caseloads across southeastern Massachusetts and broader New England.

Contact Cohen Cleary About a Nursing Home Guardian Petition

If your facility has a resident who needs a court-appointed guardian for healthcare decisions, contact Cohen Cleary to discuss the petition process. Our attorneys work directly with facility staff to move from clinical documentation to court filing. Call our offices in Taunton or Plymouth to schedule a consultation.

Frequently Asked Questions About Healthcare Facility Guardianship

When should a nursing home or healthcare facility petition for guardianship of a resident?

A facility should consider petitioning when a resident lacks capacity to make healthcare decisions, has no health care proxy or activated power of attorney, and no one is available to serve as decision-maker. If no one holds legal authority to consent, healthcare decision-making guardianship may be the only mechanism to authorize care. Delaying the petition does not reduce the facility's exposure. It increases it with every unauthorized care decision.

What is Rogers' guardianship, and when is it required?

Rogers guardianship refers to court authorization for the administration of antipsychotic medication to an incapacitated person. Under Massachusetts law, antipsychotic medication is classified as extraordinary medical treatment, and a guardian must obtain a specific court order (a Rogers order) before consenting to this treatment on behalf of the ward. This requires a separate judicial hearing and a finding that the proposed treatment plan serves the patient's best interest.

How long does the guardianship process typically take?

A standard guardianship petition typically takes several weeks from filing to hearing, depending on the court's calendar and whether the petition is contested. When urgent care is required, the court may grant temporary or emergency guardianship on an expedited basis, sometimes

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within days. We structure every petition to reflect the clinical urgency so the court can act appropriately.

What is the difference between guardianship and conservatorship for healthcare facilities?

Guardianship authorizes decisions about a person's healthcare, residential placement, and personal welfare, while conservatorship authorizes management of finances and property. Other New England states use different terminology. Rhode Island, for example, distinguishes between Guardian of the Person for healthcare decisions and Guardian of the Estate for financial management. A Guardian of the Estate holds authority similar to a Massachusetts conservator. Facilities operating across state lines should understand these distinctions, as the authority requested and procedural requirements vary by jurisdiction.

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