

GUARDIANSHIP AND ADMINISTRATION APPLICATIONS IN HOSPITAL

Important information for carers of
older people in Victoria.



Guardianship and Administration applications in hospital

This information is for Victorian carers in situations where hospital staff are recommending that an older person should be discharged to residential aged care against their wishes.

This information is intended to assist you to navigate the hospital system, understand your rights, what you can do to ensure that you are involved in planning for discharge from hospital and where to go for assistance and information.

A carer is a person who provides unpaid care and support to an older person. This may include assistance with physical and personal care, emotional support, household tasks, transport and communication. The term carer is inclusive of partners, family members and friends who are involved in the care of the older person.

Why would a hospital be concerned about an older person being discharged home?

Hospitals have a duty of care to manage risks for all patients being discharged home.

The reasons that hospital staff may be concerned about an older person being discharged home include:

- a cognitive assessment which indicates that the older person is not able to make appropriate decisions for themselves
- concern that they would be unable to undertake personal care and daily living tasks
- refusing support services
- unrealistic views about their own or their carers ability to care for them at home
- disagreement or conflict between family members regarding the appropriate discharge plan, and
- concern that they are at risk of exploitation, neglect or abuse.

Patient rights and the right to take risks

All adult patients regardless of their age have a right to be involved in decision-making regarding where they should go after hospital. This is referred to as discharge planning.

Hospitals can make recommendations about discharge plans for patients but they do not make decisions.

The **Australian Charter of Healthcare Rights** sets out the key rights of patients when seeking or receiving healthcare services anywhere in Australia, including public and private hospitals.

The Charter states that every hospital patient has the right to:

- take an active role in their health care and to be included in decisions and choices about their care
- participate as fully as they wish in decisions about their care and treatment. This involves the healthcare provider giving the patient all the information they need to make informed decisions, the opportunity to ask questions, and time to talk to their carers, family and friends before making decisions
- have family, other carers or chosen support persons receive information and be involved in making decisions about the patients care
- discharge themselves against a doctor's advice, but the patient or carer may be asked to sign a form accepting responsibility for this, and
- refuse treatment.

There are circumstances in which an adult patient may be assessed as having difficulties understanding and processing information and therefore not able to make decisions about their treatment and discharge plan. This is often referred to as the person not having the 'capacity' to make decisions for themselves.

It is important to remember that all people are considered to have capacity unless assessed as otherwise.

If there are doubts about whether an older person has capacity to make decisions a cognitive assessment by a doctor, gerontologist, neuro psychiatrist or psychologist is required.

It is important to recognise that if the older person has the capacity to make their own decisions that their views and their right to take their own risks should be respected.

Older people may make decisions which hospital staff and/or their carers do not agree with but this does not necessarily mean it is the wrong decision.

Enduring Power of Attorney/ Guardianship

If before the older person was admitted to hospital they made an Enduring Power of Attorney (Medical) and/or an Enduring Power of Guardianship make sure that a copy has been provided to the hospital and that medical staff are aware of who has been appointed to make decisions on the older person's behalf.

If an older person has not appointed a guardian and/or attorney and there is disagreement between the hospital staff and the older person and/or their carer regarding the discharge plan, the hospital may apply to the Victorian Civil and Administrative Tribunal (VCAT) to make an order for a guardian and/or administrator to be appointed. If an appointed Attorney/Guardian is not seen to be acting in the older person's best interests the hospital may also apply to VCAT to revoke or suspend an Enduring Power of Attorney/Guardianship

What is Guardianship?

Guardianship is the appointment of a person (a guardian) to make decisions for an adult with a disability when they are unable to do so. The sorts of decisions that a guardian can make are lifestyle decisions, such as where a person will live, who they should live with and medical and dental treatment. Refer to the Office of the Public Advocate www.publicadvocate.vic.gov.au for more information.

What is Administration?

Administration is the appointment of a person (an administrator) to make financial and legal decisions for an adult with a disability when they are unable to do so. An administrator **cannot make personal and lifestyle decisions** such as where a person lives. Refer to the Office of the Public Advocate www.publicadvocate.vic.gov.au for more information.

The process of applying for a Guardian and/or Administrator

If a hospital makes an application to VCAT for a guardian and/or administrator the older person and their carer have a right to be given copies of the application.

Contact the Office of the Public Advocate Advice Service telephone 1300 309 337 for further information on the process involved and what you need to do next.

What happens if a Guardian is appointed?

A guardian and/or administrator can be an individual such as a family member or friend. In determining the most suitable person to appoint VCAT will take into account the wishes of the older person, family relationships and the views of interested parties. If there is no suitable person or there are reasons for appointing an independent person, they may appoint an organisation.

If VCAT makes a decision that an independent guardian and/or administrator should be appointed they will make a written order that this should occur and will refer the order to the Office of the Public Advocate. The Office of the Public Advocate will appoint a guardian and/or an administrator. An order is time limited usually between six months and up to three years. For further information refer to the website www.publicadvocate.vic.gov.au or contact the Office of the Public Advocate Advice Service by telephone **1300 309 337**.

Working with the hospital

There are things that carers can do to develop a partnership with hospital staff.

Carers who have experienced the hospital system share these tips:

- Older people have the right to make their own decisions wherever possible and to have access to support to make these decisions.
- Most older people will be able to make decisions about hospital discharge: some will require support to make important decisions and in some instances decisions will need to be made on their behalf according to their wishes.
- Be clear about the type of support the older person requires to make decisions about their health care, treatment, where they will go on discharge and what supports they will need when they leave hospital.
- If the older person has requested you seek information on their behalf, or has been assessed as not having capacity to make their own decisions, make sure that your contact details are documented on the contacts admission sheet in the patient file.
- If there are a number of carers involved, nominate one person as the key contact for the hospital to liaise with to receive and give information.
- Speak to the nurse in charge or doctor to convey any important information and to seek regular updates.
- Request a family meeting if you and/or the older person think this would be helpful.
- If the hospital staff tells you they intend to apply to VCAT for the appointment of a guardian and/or administrator ask them why they think this is needed and whether there could be alternatives.

Family meetings

Meetings are commonly held in hospitals to provide information to a patient and their carer/s regarding a patient's condition and to plan for the future. These meetings are called 'family meetings'. A hospital may request a patient and their carer/s attend a family meeting or a patient and/or their carer may request a meeting be convened. A request for a family meeting can be made to the doctor, nurse in charge and/or the social worker.

Carers who have experienced family meetings share these tips:

- Discuss with the older person who they would like to attend the meeting. If the older person has been assessed as not having capacity to make their own decisions they should still be given the opportunity if at all possible to convey their views and wishes.
- If there are a number of carers who need to attend the meeting, nominate one person as the point of contact for the hospital to arrange the meeting.
- If there is disagreement between carers and/or conflicting views about the discharge plans for the older person, consider how to address this prior to the meeting. It is important to ensure the discussion can focus on the needs, views and preferences of the older person rather than be overshadowed by the conflict.
- Ask which health professionals will be there. There may be a number of hospital staff invited. Everyone invited should be there for a reason, either to provide information or to answer any questions you might have. However, you can request that only one or two staff attend who can provide an overview of the health needs and concerns related to the older person's hospital discharge.

- Think about whether you would like to request some time with medical staff when the older person is not present. You may have some questions or information which you do not feel comfortable discussing in front of them. Be clear about why the older person should not be present. Whenever they are not present, it is important they have adequate support for their views and wishes to be taken into account.
- Before the meeting think about what you are prepared to do to support the older person and for how long you can sustain this level of support.
- Before the meeting think about what information you want from the meeting. Make a list of the questions you have and take the list with you to the meeting.
- Take notes at the meeting or ask someone to take notes for you.

Information you may want to get from a family meeting

The sorts of things older persons and their carer/s may want information about at the meeting are:

- What is the medical condition(s) and prognosis? Request that staff explain medical terms in a way that you can understand.
- Why do the hospital staff think that discharge to home is not an option?
- What are the barriers to the older person being discharged home?
- What are the options which could address the barriers to the older person being discharged home?
- What are carers or formal services required to do to assist the older person be safe at home?
- What rehabilitation programs are available that could improve the older person's function and/or capacity to make decisions?
- What is the range of help available in the community to support the older person at home e.g. assistance with household tasks, personal care, transport to medical appointments, aids and equipment, community nursing, respite care, supports for the carer/s? Is there a cost for these services?
- What training and education can be provided to carers to improve their capacity to care for the older person?
- What modifications could be made to the home environment which would reduce the risks to older person at home?

You may feel pressured to make decisions on the spot. Use the information you have gathered to talk to others and plan the next steps. Ask for time to think about and discuss the options before you make a decision.

An older person and/or their carer can suggest leave from hospital or a trial period at home to 'see how it goes'.

What are the alternatives to residential aged care?

There are a number of options to consider in planning for older people to live safely at home and in the community:

- going home with support services
- inpatient and community rehabilitation programs
- transition care, and
- respite care.

Where to go for information and support

If someone in the hospital has spoken to you about applying for a guardianship and/or administration order, get information, advice and support early so that you can be fully informed about the process.

The following is a list of people and places where older people and their carers can obtain information, advocacy and support to assist them to be involved in decisions being made at the hospital.

Hospital Social Worker, if the hospital does not have a social worker, ask to speak to the Patient Liaison Officer or Patient Representative Officer. Their role is to help you resolve any issues and concerns you are experiencing at the hospital.

Health Services Commissioner assists in the resolution of complaints, protects patient's right of access to their health information, and conciliates formally or informally between patients and service providers. The service is available Monday to Friday on **1300 582 113**.

Victorian Civil and Administrative Tribunal Guardianship List website <http://www.vcat.vic.gov.au/disputes/guardians-administrators>.

Office of the Public Advocate website provides information and fact sheets on guardianship and administration orders www.publicadvocate.vic.gov.au.

Office of the Public Advocate Telephone Advice Service can provide information on the law and the process involved in applications for guardianship and administration. The Advice Service will not tell you what to do, it will provide you with information regarding the law to assist you in making your own decision. The Advice Service is available Monday to Friday 9am to 5pm on **1300 309 337**.

Seniors Rights Victoria can provide information, advice and advocacy for older people. It does not advocate on behalf of carers. The service is available Monday to Friday 9am–5pm on **1300 368 82**.

Carers Victoria Advisory Line offers carers information and advice on a range of services and supports. The Advisory Line is available Monday to Friday 8.30am to 4.30pm on **1800 242 636**.

My Aged Care website www.myagedcare.gov.au has been established by the Australian Government to help older people and carers navigate the aged care system. Provides information on the types of help available in the community to support older people at home and about residential aged care services.

My Aged Care Contact Centre can be contacted Monday to Friday 8am–8pm, Saturday 10am–2pm on **1800 200 422**.



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