SUPPORTS & SERVICES – ALTERNATIVES TO GUARDIANSHIP

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GUARDIANSHIP REFORMS

The legislature mandated that a probate court must consider **alternatives to guardianship and supports and services** before a guardianship is created.

LEAST RESTRICTIVE ALTERNATIVES POLICIES

GUARDIANSHIP POLICY

Texas courts have the authority to appoint a guardian with **full or limited authority** over an incapacitated person. However, a guardianship should be only as restrictive:

- as indicated by the person's actual mental or physical limitations; and

- as necessary to promote and protect his or her well-being.

Tex. Est. Code § 1001.001(a).

THE CONTINUUM

Supports and Services
No Guardianship

Supports and Services &
Limited Guardianship

Full Guardianship

" . . . the court shall design the guardianship to encourage the development or maintenance of maximum self-reliance and independence in the incapacitated person, including by presuming that the incapacitated person retains capacity to make personal decisions regarding the person's residence. "

TEX. ESTATES CODE § 1001.001(b)

GUARDIANSHIP POLICY (CONT.)

- When an application for guardianship is filed, a court investigator must determine whether a less restrictive alternative to guardianship is appropriate.

Tex. Est. Code § 1054.151.

- <u>NEW</u>: All parties – the applicant, attorney ad litem, guardian ad litem, physicians, and the court have an **obligation to consider less restrictive alternatives and supports and services.**

Title search: Alternatives to Guardianship and Supports and Services

Also available as part of the eCourse
[Answer Bar: Elder Law and Medicaid Essentials](#)

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