

Protecting the Elderly and Persons with Guardians

A Pandemic Resource from NCSC

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The need for social distancing carries risks for our most vulnerable citizens, including the elderly and those who require guardians and/or conservators to care for them. The needs of these groups must be considered by courts, even as courts work to protect their own staff and the public from unnecessary exposure.

Courts may consider the following:

- Maintaining access to the courts for emergencies and time-sensitive situations, including filing petitions, reports, and having hearings when necessary.
Note: It is also important that litigants know that the court is open for filings and how to file if the process has changed.
- Requesting an immediate risk assessment of individuals currently under the court's protection, including subjects of guardianships and conservatorships. The assessment could be conducted by the attorney, guardian, conservator, or court visitor and include information regarding:
 - Current living arrangement;
 - Stability of living arrangement;
 - Health risks in current living arrangement, including to the caregiver who may be elderly or at other increased risk;
 - Plans for backup guardian;
 - Current contact information, including alternate contacts;
 - Continuing availability of necessary in-home services; and
 - Education continuity and enrichment for children in guardianships who are currently out of school.
- Examining how visitation/interaction with protected persons can take place. Specific considerations may include:
 - The Center for Medicare and Medicaid Services (CMS) has issued a [memorandum](#) barring all visitors to nursing homes except for surveyors, who are required to inspect nursing homes at least once a year, and end-of-life situations. States and municipalities may have additional restrictions, particularly for congregate care facilities.
 - Conducting visits with social distancing may be possible, including outdoors. Alternatively, the use of videoconferencing or even the telephone may be used to maintain regular contacts.

- Evaluating requests for continuances or delays to ensure that they are strictly necessary. Many courts are keeping timelines in place for required well-being, accounting, and other reporting even if they are delaying hearings.
- Where hearings are necessary:
 - Develop the ability to conduct hearings via teleconference when possible. This allows participants, particularly at-risk individuals, to participate remotely.
 - If some or all participants are in the courtroom, ensure at least six feet between all individuals. This includes maintaining distance through security screening, in elevators, in the hallways, and in courtrooms. This may mean reconfiguring the courtroom if possible. If a larger courtroom is available for use, it may make social distancing easier to accomplish. Physically separating chairs or marking safe seating every six feet on benches can help everyone be aware of the distances necessary.
 - Scheduling hearings so that there is time for the participants in one matter to depart before those in the next proceeding arrive.

Consider who is essential to attend a hearing in person, who can participate by video, and who can participate by phone. In guardianship/conservatorship hearings, this includes the protected person, guardians, conservators, caseworkers, and attorneys. If the protected person is participating remotely, consider who may be able to assist them. Also consider the ability of parties to confer privately with their attorneys. Statutes or court rules may require consideration of how to ensure public access (e.g. video streaming remote hearings).

Keep in mind that not everyone has access to the technology (equipment or Internet access) to participate in videoconferencing. Many nursing homes lack wireless Internet access and means for remote access. Where access is available, confidentiality may be compromised. Some courts are finding that smart phones provide an adequate platform for most aspects of remote hearings.

Going forward, courts must consider preparations for an influx of cases. As stress and economic pressures build, abuse, neglect, and financial fraud may increase. Some guardians and caregivers may find themselves unable to continue in their roles due to health issues or economic pressures.

Resources for guardians can be found at www.guardianship.org.