

Frequently Asked Questions about Vaccinating People Subject to Guardianship

Answered by: Mitchell Hagopian, Attorney, Disability Rights Wisconsin

Question: Does a guardian have a responsibility to be sure their ward has been vaccinated against Covid 19?

Answer: Yes – in almost all cases.

A guardian is responsible for providing their ward with adequate and appropriate medical care, including preventative care, that is in the ward's best interest. Wis. Stat. §54.25(1)(b).

The COVID-19 vaccine is highly effective at keeping people free of severe outcomes from COVID-19, which is a serious and possibly fatal disease. It is always in a ward's best interest to remain free of a serious and possibly fatal disease. The COVID-19 vaccine is authorized for use by the Food and Drug Administration, has no serious side-effects for most people taking it, and is highly effective in preventing altogether, or lessening the effects of, a serious, life-threatening disease.

A guardian must balance risks and benefits when deciding what is in a ward's best interest. A guardian should ask: Are the potential side effects of the vaccine and the small risk of an allergic reaction, as demonstrated through experience and data, great enough to outweigh the risks of contracting COVID-19?

The guardian should discuss any questions or concerns with their ward's doctor. Those questions should include:

- Does the ward have allergies? If so, to what?
- Has the ward ever had an allergic reaction to a vaccine before? If so, what vaccine was the reaction to?
- Is the COVID-19 vaccine similar to the one to which there was a reaction?
- Does the ward have any other medical condition that might make vaccination a higher risk?
- Could the side effects of the vaccine cause the ward some serious danger?
- Is the ward extremely afraid of needles or getting shots and if so, would that fear make the vaccine experience even more difficult than the potential impact of contracting the disease?

The guardian must balance any identified risk from the vaccine or the vaccine experience against the real risk of serious illness or death should the ward contract COVID-19. If the answer is no to these (or other) risk factors, vaccination would be in the ward's best interests. If any of these above issues are present, the guardian should discuss them with the ward's doctor to help decide whether the risks outweigh the vaccine's benefits.

Question: What if the guardian doesn't believe in vaccinating themselves or anyone else?

Answer: A guardian's personal opinion about whether they would take the vaccine themselves is not an appropriate consideration when making the 'best interests' determination for a ward.

The 'best interests' decision must be informed by objective facts and the current state of medical knowledge. A guardian who fails to make arrangements to have a ward vaccinated based on a guardian's personal beliefs could be considered to be neglecting the ward's medical needs. Neglect of the ward's medical needs and failing to act in the best interest of the ward are both reasons for a court review of the guardian's conduct. Wis. Stats § 54.68(2)(c) and (g). One of the possible consequences of neglecting a ward's medical needs or failing to act in their best interests is removal of the guardian. Wis. Stats § 54.68(4)(d).

Question: Does it matter what the ward wants?

Answer: Yes.

Even wards who have lost the right to consent to medical treatment retain the right to express their opinions about issues that concern them. A ward's wishes, unless against their own interests, are required to be considered and, when possible, honored. Wis. Stat. §54.25(3)(d)3.

A ward's request to receive a vaccine that has been authorized by the FDA and is effective should be honored unless there is a specific medical concern. In a case involving a guardian's authority to withhold medical treatment, the Wisconsin Supreme Court has decided in a guardianship case involving a guardian's authority to withhold or withdraw life-sustaining medical treatment that if the ward's wishes can be determined and are clear, it is in the ward's best interest for the guardian to honor those wishes. *Matter of Guardianship of L.W.*, 167 Wis.2d 53, 79, 482 N.W.2d 60 (1992).

The guardianship law now requires that the guardian "make diligent efforts to identify and honor the individual's preferences with respect to choice of place of living, **personal liberty** and mobility, choice of associates, communication with others, personal privacy, and choices related to sexual expression and procreation." Wis. Stat. § 54.25(2)(d)3.b. In other words, a guardian breaches their duty to the ward if they ignore the ward's expressed wishes on matters where the request is reasonable and consistent with the ward's best interests.

Finally, a guardian is required to "[p]lace the least possible restriction on the individual's personal liberty and exercise of constitutional and statutory rights and **promote the greatest possible integration of the individual into his or her community**." Wis. Stat. § 54.25(2)3.a. During the pandemic, people with disabilities have been isolated and separated from their communities, with terrible consequences for their mental health and well-being. Getting the COVID-19 vaccine is a way to allow people to return to their community life. Getting a ward vaccinated, where it is medically safe to do so, falls within the statutory mandate that guardians promote the ward's right to be integrated into the community. Ignoring the ward's request on such an important issue would also be grounds for a guardian's conduct to be reviewed and grounds for removal.

The guardian's legal responsibilities to promote community integration and identify and honor ward preferences whenever possible are included in the letters of guardianship issued when the guardian is appointed.