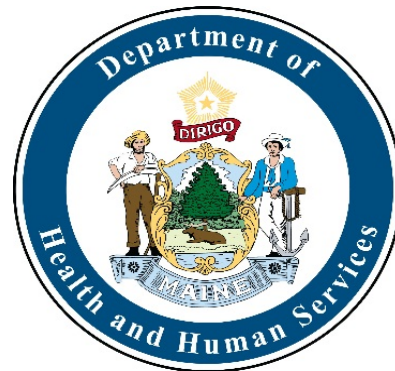


# OADS – Adult Protective Services Public Guardianship Program Overview

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# Agenda

## **I. OADS APS/Public Guardianship Program Structure**

## **II. Probate Code**

- a. Petitions to probate court**
- b. Emergency petitions/Motions to Expedite**
- c. Guardianship authority/duties**

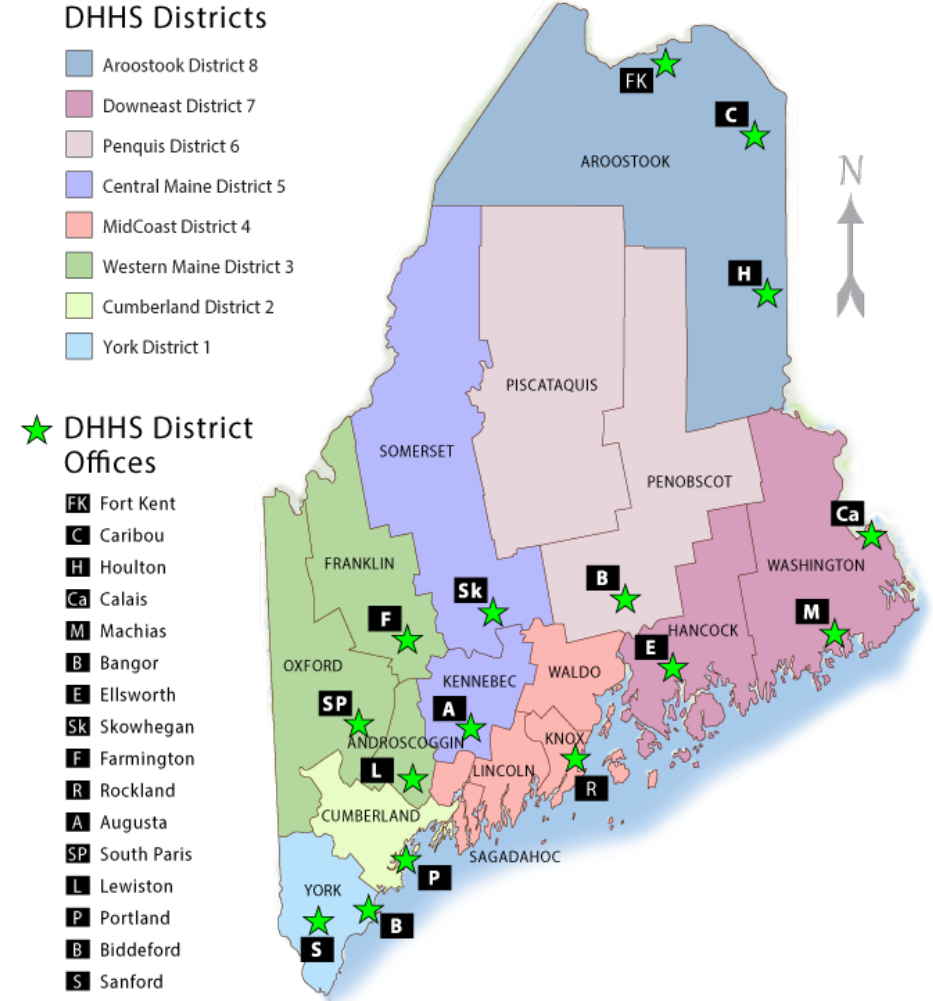
## **III. APS Process**

- a. Guardianship studies**
- b. Public guardianship duties/authority**

This is a program overview. Not legal advice or analysis.

# APS Structure

- **District Offices**
  - Investigations and Public Guardianship Reps
- **Intake**
- **Central Office**



# Probate Code

- **Maine Uniform Probate Code – effective September 2019**
  - Increased focus on least restrictive alternatives to guardianship/conservatorship
  - Increased focus on self-determination
  - Additional notice requirements and specific limitations on guardianship authority
  - Some changes not in effect for private guardians until formal notice received from the court

# Probate Code – Petitioning

## • Petitioning for guardianship and/or conservatorship

1. **Appointment.** On petition and after notice and hearing, the court may:

A. Appoint a guardian for a respondent who is an adult if it finds by clear and convincing evidence that the respondent lacks the ability to meet essential requirements for physical health, safety or self-care because:

(1) The respondent is unable to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance or supported decision making that provides adequate protection for the respondent;

(2) The respondent's identified needs cannot be met by a protective arrangement instead of guardianship or other less restrictive alternatives that provide adequate protection for the respondent; and

(3) The appointment is necessary or desirable as a means of enabling the respondent to meet essential requirements for physical health, safety or self-care; or [PL 2019, c. 417, Pt. A, §21 (AMD).]

# Probate Code – Emergency Petitions

- Appointment is “likely to prevent substantial harm to the adult’s physical health, safety, or welfare”
- Limited to 60 days (court may extend additional 120 days if necessary)
- Establishing an emergency in a hospital setting – varies by County
- Motions to Expedite may be another option when emergency cannot be established

# Probate Code – Guardianship Authority/Duties

- Fiduciary
- Promote self-determination
- Reasonable care, diligence, and prudence
- Decisions of the adult vs. decisions in best interest of the adult
  
- **General Limitations**
  - Cannot revoke POA or advance directive (unless authorized by the court)
  - Cannot initiate commitment to a mental health facility (involuntary civil commitment process applies)
  - Cannot limit contact or communication (unless authorized, PFA, good cause/emergency)
  
- **Duties with respect to dwelling and health care decisions have detailed notice and process requirements**

**Guardianship Order contains individualized information/limitations**

# APS Process – Guardianship Studies

- **Public Guardianship and Conservatorship is a last resort.**
- **Some considerations**
  - **Basis for appointment criteria (Slide 5)**
  - **Suitable private guardian or conservator available and willing?**
  - **Emergency? Contested or uncontested?**



# APS Process – Public Guardianship/Conservatorship Duties and Authority

- Generally consistent with private guardianship duties and authority
- Report to the court at least annually
- Face-to-face visit every 30-60 days required (internal policy)
- Monitor changes needed (e.g., petitions to reduce/expand decision-making authority, terminate guardianship)

# APS Process – Public Guardianship/Conservatorship Duties and Authority

- **Levels of authority** (established in rule – still subject to any specific limitations set by the court)
  - Health care decisions
    - Guardian Reps (caseworkers) can generally approve routine treatment, routine medication changes
    - Commissioner approval required for abortion, sterilization, removal of life-sustaining treatment
    - General policy: no authorization of physical restraint for routine medical care
  - Financial decisions
    - Asset Disposition Committee for “larger” purchases/sales

# Questions?

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