

Maryland Judiciary  
*Guardian Decision-Making Standards*

As a guardian, you will be the disabled person's decision-maker. This does not come naturally to most people. You need to engage in a specific thought process for every decision. These thought processes are sometimes called decision-making standards. There are four different standards: substituted judgment, best interest, least restrictive alternative, and informed consent. Let's explore them one at a time.

---

**Substituted judgment** is based on what the disabled person would do if they had the ability to make their own decisions. This assumes that the disabled person had that capacity at one time. Some guardians will know the person well enough to have that answer. You may have had conversations with them before they lost capacity, or perhaps the person has made their wishes known in a will, living will, contract, or other document. If you don't know how the disabled person would decide, you'll need to do a little leg work. Learn about their preferences, values, lifestyle, and behaviors, as well as the decisions they made before losing capacity. Speak with people who know the disabled person's preferences, such as family, friends, caregivers, or clergy. Finally, consider the person's religious, moral, cultural, and ethical beliefs.

---

The second decision-making standard is called **best interest**. Use this one when you don't know how the disabled person would act, or when they never had capacity. Acting in their best interest means weighing the benefits against the burdens any act or decision will place on the disabled person. It means considering all possibilities and choosing the option that will have the greatest benefit and result in the least harm to that person. You may need to seek out independent opinions from experts such as doctors, social workers, attorneys, or government agencies to help you with this process.

---

The third standard is the **least restrictive alternative**, which means choosing the option that meets the needs of the disabled person while placing the fewest limits on their independence and dignity. When you use this standard, it is helpful to know the disabled person's preferences, get professional opinions, and learn about community resources available to them.

---

The final decision-making standard is called **informed consent**. As guardian of the person, you must give informed consent for the disabled person to receive care, treatment, or services. Informed means you must know and understand the purpose, risks, benefits, and alternatives

to any treatment or service you consider for the disabled person. Your consent must also be given freely, without coercion or undue influence from others.

---

When making decisions as a guardian, use these four decision-making standards. Substituted judgment is based on what the disabled person would do if they could. If you don't know what they would do, use the best interest standard to choose the option with the greatest benefit and least harm. The least restrictive alternative calls on you to make choices that meet the disabled person's needs and place the fewest restrictions on their dignity and independence. Finally, informed consent requires you to understand the purpose, risk, benefits, and alternatives to any service you consider for the disabled person.