



Guardianship Issues in the Patient Discharge Process

**Amy Ready, RN,
Director Care Management**

March 2026

Billings Clinic Discharge Process

- Billings Clinic routinely treats patients lacking decisional capacity who cannot be safely discharged without a legally authorized decision-maker.
- Care providers at other levels of care require someone with decision making ability to accept this growing number of patients.
- Often, no family member, healthcare agent, or advance directive exists.

Billings Clinic Discharge Process

- Temporary guardians are appointed based on emergent need.
- Guardianship through a third-party temporary guardian is pursued as a last-resort legal mechanism to enable discharge of a patient lacking decisional capacity to another level of necessary care.
- Generally, temporary guardianship in the acute-care context like this is not sought for long-term lifestyle decision-making, but...
 - to authorize placement, consent to routine care, execute administrative documents required by receiving facilities
 - to assist all care providers in medical decision-making matters in the future.

Billings Clinic Discharge Process

Delays in appointment translate into disruptions in delivery of health care to these patients and other patients. While well-intentioned, introducing additional procedural steps into an already constrained and time-sensitive process creates barriers to care.

Billings Clinic Discharge Process

- Additional pre-appointment requirements for a temporary guardian could lengthen the time to secure a temporary guardian and the availability of temporary guardians, especially in the case of family member engagement as a temporary guardian.
- Even minor delays can result in patients remaining hospitalized much longer than medically necessary.
- This creates bad patient outcomes and limits availability of needed hospital beds for patients requiring acute level care.

Prolonged hospitalization increases the risk of hospital-acquired infections, delirium, falls, pressure injuries, and functional decline, particularly among elderly and cognitively impaired patients.

Billings Clinic Discharge Process

- Billings Clinic serves as a regional referral center for trauma and complex medical care.
- Discharge delays reduce bed availability, divert emergency patients, and impair regional access to critical services.
- Care teams experience more distress when patients are forced to remain hospitalized for non-medical reasons, particularly when lower levels of care are clinically appropriate.

Billings Clinic Discharge Process

- Billings Clinic assists patients with no family or friends by seeking temporary guardian appointment if no one steps forward in order to secure appropriate placement to the right level of patient care.
- Billings Clinic also assists patients with family or friends to seek temporary guardian appointments as part of the discharge process.
- Following temporary appointment, a guardian most often seeks permanent appointment.
- Billings Clinic has a process in place to vet potential temporary guardians and involves its medical ethicist in decision making.

Concerns Over Legislative Changes

- Proposed Legislation change 72-5-312(5):
To ensure a person is best qualified to serve as guardian, the court may require the person to receive guardianship training in prior to or after the person's appointment as a guardian. The court will consider the specific needs of the incapacitated person and the potential guardian to determine what training should be required.

Concerns Over Legislative Changes

- Proposed Legislation change 72-5-312(6):
The court may require a person to complete a background check, including a criminal history check and credit check, before appointing that person as a guardian. The court may decline to appoint a person as guardian if the results of the background check indicate the person is not suitable to act as guardian of the incapacitated person.

(5) Except in the event of the appointment of a temporary guardian as provided in 72-5-317:

~~(5)~~(a) To ensure a person is best qualified to serve as guardian, the court may require the person to receive guardianship training ~~in~~ prior to or after the person's appointment as a guardian. The court will consider the specific needs of the incapacitated person and the potential guardian to determine what training should be required.

~~(6)~~(b) The court may require a person to complete a background check, including a criminal history check and credit check, before appointing that person as a guardian. The court may decline to appoint a person as guardian if the results of the background check indicate the person is not suitable to act as guardian of the incapacitated person.

Questions

