

Effective 5/6/2026

75-5-301.5 Rights of a person alleged to be incapacitated -- Rights of an incapacitated person.

- (1) Except as otherwise provided by this chapter or any other law, a person alleged to be incapacitated has the right to:
 - (a) be represented by counsel before a guardianship is imposed and have counsel represent the person during the guardianship proceeding, except as provided in Subsection 75-5-303(6)(e);
 - (b) receive a copy of all documents filed in a guardianship proceeding;
 - (c) have a relative, physician, physician assistant, or any interested person speak about or raise any issue of concern on behalf of the person during the guardianship proceeding;
 - (d) receive information about guardianships from the court; and
 - (e) be treated with respect and dignity.
- (2) For a guardianship granted before May 7, 2025, the rights of an incapacitated person for whom a guardian is appointed are in accordance with the statutory provisions in effect as of the date that the guardianship was granted, including, as applicable, Subsection 75-5-312(1)(c)(i) unless expressly limited by a court in the order of appointment.
- (3) Except as otherwise provided by this chapter or any other law, for a guardianship granted on or after May 7, 2025, an incapacitated person for whom a guardian is appointed has the right to:
 - (a) have counsel represent the incapacitated person at any time after the guardian is appointed;
 - (b) have a relative, physician, physician assistant, or any interested person speak about or raise any issue of concern on behalf of the person in any court hearing about the guardianship;
 - (c) receive a copy of all documents filed in court regarding the guardianship;
 - (d) receive information about guardianships from the court;
 - (e) ask questions and express concerns or complaints about a guardian and the actions of a guardian to the court;
 - (f) be granted the greatest degree of freedom possible that is consistent with the reasons for the guardianship;
 - (g) be treated with respect and dignity;
 - (h) be treated fairly by the incapacitated person's guardian;
 - (i) have all services provided by a guardian at a reasonable rate of compensation;
 - (j) have a court review any request for payment by a guardian to avoid excessive or unnecessary fees or duplicative billing;
 - (k) receive prudent financial management of the incapacitated person's property;
 - (l) subject to Subsections 75-5-312(4)(h) and 75-5-417(4), and subject to the exception provided in Subsection 75-5-312(7)(d), receive a copy of an accounting report regarding the incapacitated person's estate that is submitted to the court by the guardian under Section 75-5-312 or the conservator under Section 75-5-417 if a conservator is appointed for the incapacitated person; and
 - (m) ask the court to:
 - (i) review the management activity of a guardian if a dispute cannot be resolved regarding the guardian's management;
 - (ii) continue to review the need for a guardianship or to modify or terminate a guardianship in accordance with Section 75-5-306 and Section 75-5-307; and
 - (iii) enter an order restoring the incapacitated person's capacity at the earliest possible time in accordance with Section 75-5-306 and Section 75-5-307.
- (4) The court may not waive, suspend, or limit a right described in Subsection (3).

- (5) Except as otherwise provided by this chapter or any other law, and subject to Subsection (6), for a guardianship granted on or after May 7, 2025, an incapacitated person for whom a guardian is appointed has the right, to the extent practicable, to:
- (a) participate in developing an individualized plan for the incapacitated person's care, including:
 - (i) managing the incapacitated person's assets and property;
 - (ii) determining the incapacitated person's residence; and
 - (iii) determining the services to be received by the incapacitated person;
 - (b) be given consideration in regards to the incapacitated person's current and previously stated desires, preferences for health care and medical treatment, and religious and moral beliefs;
 - (c) remain as independent as possible, including giving deference to the incapacitated person's preference for the incapacitated person's residence and standard of living:
 - (i) as expressed or demonstrated before a determination of capacity was made; or
 - (ii) as currently expressed or demonstrated by the incapacitated person if the preference is reasonable under the circumstances;
 - (d) be able to exercise control over all aspects of the incapacitated person's life that are not granted to the guardian in an order of appointment of a limited guardianship;
 - (e) maintain privacy and confidentiality in personal matters, to the extent that privacy and confidentiality does not inhibit the ability of the incapacitated person's guardian to fulfill the guardian's responsibilities or perform the guardian's duties;
 - (f) receive telephone calls and personal mail and associate with relatives and acquaintances unless the guardian and the court determine that the association should be restricted or prohibited in accordance with Section 75-5-312.5;
 - (g) receive timely, effective, and appropriate health care and medical treatment that does not violate the incapacitated person's rights;
 - (h) receive an allowance or control a reasonable amount of the incapacitated person's earnings or other income; and
 - (i) collaborate with the incapacitated person's guardian to use appropriate financial tools to maintain a bank account and manage the incapacitated person's personal money.
- (6) The court may waive or limit a right described in Subsection (5) if:
- (a) an interested party requests the waiver or limitation; and
 - (b) the court finds, by clear and convincing evidence, that there is a compelling reason for the waiver or limitation.
- (7)
- (a) The rights of an incapacitated person under this section do not abrogate any remedy provided by law.
 - (b) This section may not be interpreted in a way that would permit or justify any action that violates a provision in Sections 76-5-111 through 76-5-111.4 or Section 76-5-112.5.
 - (c) Nothing in this section shall be construed to alter or preempt the requirements for protecting health information under the Health Insurance Portability and Accountability Act of 1996, 50 Pub. L. No. 104-191, 110 Stat. 1936, as amended.
- (8) Any right described in this section may be:
- (a) addressed in a guardianship proceeding; or
 - (b) enforced through a private cause of action.

Amended by Chapter 265, 2026 General Session