



Public Employees Insurance Agency

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West Virginia Public Employees Insurance Agency Guidance on Guardianships

There have been questions about Guardianships and about the Guardianships of children being “**TEMPORARY**” and/or “**PERMANENT**” and how that determination is made. Per PEIA rule(s), a policyholder must have legal custody of a dependent in order for them to be eligible for coverage(s) under PEIA.

Legal Guardianship defined -

A legal guardianship is a relationship created when a person or institution is named by the Court to take care of minor children. Eligibility for guardianship requires an Order from a Court of record. Notarized documents signed by parents assigning “guardianship” are not sufficient to establish eligibility. The term “guardian” may also refer to someone who is Court-appointed to care for and/or handle the affairs of an adult person who is incompetent or incapable of administering his/her affairs and has been deemed a “protected person” in accordance with W. Va. Code § 44A-1-4 or other similar statute. Sometimes a separate person is appointed to handle the financial matters of the child(ren) or the adult and that relationship is called a, “Conservatorship”.

How is a Guardianship different than an adoption?

The difference between guardianship and adoption is that adoption is a permanent and legal transfer of parental rights from the biological parents to the adoptive parents. Guardianship is a temporary and legal arrangement that gives an adult the authority to care for a child and make decisions on their behalf. In a Guardianship, the biological parents retain parental rights and can, with approval from the Court(s), terminate the guardianship at any time. Adoption is a lifelong commitment, while guardianship is typically a temporary commitment that ends when the child reaches the age of maturity – generally age 18.

For purposes of the Guardianship of Adults, if the Guardianship is granted by a court after the protected person reaches the age of 26, and the protected person was not continuously covered under the eligibility requirements of the Disabled Child section of this Plan Document, then the “protected person” shall not be eligible for coverages as a dependent under PEIA benefits.

If the last paragraphs of the Guardianship Order contain language and/or state, “*This Guardianship shall remain in effect until provisions of §44-10-3...*” or similar language, then the Guardianship is considered “**TEMPORARY**” as the parents or others may petition the Court at any time to terminate the Guardianship and/or West Virginia DHHR Child Protective Services (CPS) may change the Guardianship and/or other factors may change or affect the Guardianship. As PEIA does not have the ability to monitor the Family Courts and/or Circuit Courts, it is the responsibility of the member to provide PEIA with documentation and/or proof that the Guardianship remains in effect every year. Further, if the Order states that there will be a subsequent hearing in the matter, e.g. language akin to, “*This matter will be reviewed/reheard on...*” then the Guardianship will be considered “**TEMPORARY**” and may term at a period of less than one (1) year.

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The “**TEMPORARY**” Guardianships are set to term at the maximum of one (1) year from the date eligibility is established – sooner if there are terms in the Order that establish an expiration date or set the date(s) for a hearing to review the Guardianship. To continue coverage(s), the member must provide an update to PEIA. This update can be one of the following:

- a. A letter from the Circuit Clerk attesting that the Order on file with PEIA is the most recent action in the case/matter
- b. A new Order from the Court of record having jurisdiction stating that the Guardianship Order is “**PERMANENT**”
- c. A letter from Child Protective Services or an Authority Having Jurisdiction that states that the Guardianship remains in effect
- d. A written affidavit attesting that the Guardianship remains in effect and that the dependent(s) remain in the legal custody of the policyholder member.

PEIA can request this information about the Guardianship under provisions of West Virginia Code §5-16-12a. Inspections; violations and penalties. which states: “(a) *Employers and employees participating in any of the Public Employees Insurance Agency plans shall provide, to the director, upon request, all documentation reasonably required for the director to discharge the responsibilities under this article. This documentation includes, but is not limited to, employment or eligibility records sufficient to verify actual full-time employment and eligibility of employees who participate in the Public Employees Insurance Agency plans.*”

If the Guardianship Order states that the Guardianship is “**PERMANENT**” and/or that the matter is “*closed*”, “*stricken from the record*”, “*finalized*” or otherwise interpreted as the last action in the matter, then PEIA views the Guardianship as “**PERMANENT**” and it will remain in effect until the child(ren) reach the age of eighteen (18). Remember, the “*Guardianship of a Minor*” is only in effect when the child(ren) is/are a minor and all guardianship rights cease once the child(ren) reach(es) adult status.

It is important to note that “Guardianship” is a legal status and not a matter of convenience. Parents cannot “sign over” their children to others nor can they assign responsibilities such as insurance to others. A notarized document or written agreement between parties does not make a “Guardianship” “legal” - only a Court of competent jurisdiction or the State agency charged with the protection of children can change the custodial status of a child. Notarized documents may work for doctor’s appointments, schools and/or others but they do not meet PEIA’s legal standards for adding a dependent. Further, “Emergency Placements” by Child Protective Services are not Guardianships as the State retains custody of the child during the matter and is responsible for providing insurance(s) and/or health care.

References:

1. West Virginia Code §5-16-12a.
2. West Virginia Code §44-10-3 - <https://code.wvlegislature.gov/44-10-3/>
3. West Virginia Code §44A-1-4 - <https://code.wvlegislature.gov/44A-1-4/>
4. West Virginia DHHR Guardianship Policy - <https://dhhr.wv.gov/bss/policy/Documents/Legal%20Guardianship%20Policy%20November%202024.docx.pdf>
5. West Virginia DHHR Guardianship Manual - https://www.wvdhhr.org/bcf/policy/social_services/AdultGuardianship/AdultGuardianshipPolicy.pdf
6. West Virginia Guardian and Conservator Handbook - https://www.wvdhhr.org/bcf/policy/social_services/Guardianship/Guardian%20and%20Conservator%20Handbook.pdf

7. West Virginia Public Employees Insurance Agency Plan Document
8. West Virginia Public Employees Insurance Agency Summary Plan Description PY2025

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