

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)



A Guide to Understanding Adult Guardianship and Guardianship Alternatives in Maine



LEARN *how to:*

Help preserve an individual's right to make decisions about his or her life.

Find the least restrictive way(s) to provide an individual with the care, supervision, and support he or she needs.



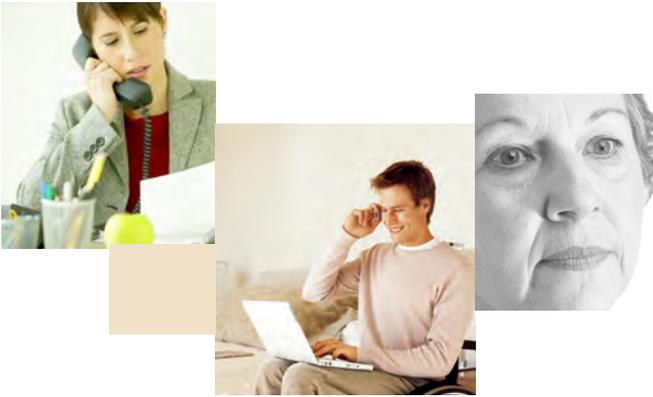
Department of Health
and Human Services

Maine People Living
Safe, Healthy and Productive Lives

John E. Baldacci, Governor

Brenda M. Harvey, Commissioner

A joint publication of the Office of Elder Services and Office of Adults with Cognitive and Physical Disabilities Services within Maine's Department of Health and Human Services.



This document was developed under CA-AD-06-213, a cooperative agreement between the University of Southern Maine and the Maine Department of Health and Human Services. This cooperative agreement was funded under grant CFDA 93.779 from the U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services.

The contents and opinions expressed in this guide are the authors' and no endorsement by the University of Southern Maine or the funding sources is intended or should be inferred.

We would like to thank the stakeholders involved in Maine's Guardianship Project for their passion and commitment to preserving the rights of adults in Maine.

Disclaimers:

Please note that this guide is not intended as legal advice, particularly since the laws change from time to time and because there might be other factors involved which go beyond the scope of this guide. If you have any questions about how the law applies to a specific situation, you should consult a lawyer or Register of Probate.

Photographs include models and are used for illustrative purposes only.



What Is INSIDE?

READ THIS GUIDE if you are seeking information about guardianship for someone you know or work with. Share this guide with everyone involved in this decision.

Get the Facts About GUARDIANSHIP	4
What Is a GUARDIAN?.....	5
<i>How to Use This GUIDE</i>	8
<i>Alternatives to Full GUARDIANSHIP</i>	9
How to Research ALTERNATIVES to Guardianship.....	11
What Have Other Adults Learned About ALTERNATIVES to Guardianship?	14
When Is FULL GUARDIANSHIP Appropriate?.....	21
What Can An INDIVIDUAL Expect If He or She Has a Full Guardian?	22
Frequently Asked QUESTIONS.....	23
Review of KEY POINTS	25
Where to Go For More HELP and INFORMATION	26



Get the Facts *About* GUARDIANSHIP

Guardianship is often suggested for individuals who need help with regular activities of daily living, such as paying bills, managing medications, or buying groceries and preparing meals.

Individuals who may be referred for guardianship might include: a student with a developmental disability who is turning 18, a frail elder, a person in the late stages of Alzheimer's, or a person with mental illness who is unable to make informed decisions.

You may be seeking information about guardianship because a loved one or someone you work with is experiencing a difficult time. Since your desire to help them is sincere, you will want to get the facts that will help you decide whether guardianship is the best choice.

What is a GUARDIAN?

A Guardian is a person appointed by the court to make decisions on behalf of another individual. A guardian is appointed if the court finds an individual is unable to make certain decisions independently.

In many ways, a Guardian has the same powers and responsibilities as a parent of a minor child. A guardian can make decisions about how an individual spends his money, where an individual lives, what activities an individual participates in, and what medical care he receives. Unlike a parent, a guardian does not have to provide for an individual financially.

The decision to pursue Guardianship is a very serious step because guardianship significantly affects a person's individual rights and freedoms.

Full Guardianship, the most restrictive form of guardianship, should be considered only after other options have been explored and ruled out.



Full or Limited GUARDIANSHIP

What you need to know about Full Guardianship:

- Full guardianship can take away an individual's basic rights to make choices about his or her life.
- Under full guardianship, a person may not be able to choose where to live, what to eat or wear, or who to have relationships with.
- Under full guardianship, a person may not be allowed to access money, spend money, or save money.
- Guardianship is not a quick fix. The process of appointing a guardian may require significant time and energy.
- Having a guardian does not prevent an individual from making poor decisions.
- While individuals retain some rights under a limited guardianship, most guardians in Maine have full guardianships of their wards. It is important to understand that full guardianship is not the only option.

The court can assign a *FULL* or *LIMITED* guardianship.

Under **Full Guardianship**, a guardian has decision-making control over *all* areas of an individual's life.

Under a **Limited Guardianship**, a guardian has control over *some* but not all areas of an individual's life. For example, a limited guardian may be responsible for providing consent for medical treatment *or* making all financial decisions.

It is possible to move from a limited guardianship to a full guardianship if necessary. If an individual's condition worsens, the guardian may ask the court for increased decision-making control up to full guardianship.

How to Use This GUIDE

THIS GUIDE is designed to help you begin the process of researching alternatives to guardianship. It is intended to serve as a resource as you decide whether full guardianship is the most appropriate and least restrictive alternative for an individual in your life.

As you read about the experiences of other adults who have considered full guardianship, it is important to keep in mind the following considerations:

- ***There is no single correct answer for all families and/or individuals considering guardianship.*** Different individuals have different situations, needs, and available supports. What may work for one individual might not work for another.
- The process of researching guardianship and its alternatives should be tailored to the individual and should take into account his or her specific needs, circumstances, and available supports.
- Full guardianship may still be appropriate in instances when:
 - ✓ An individual is unable to make or communicate responsible decisions for him or herself;
 - ✓ A full guardian is necessary to ensure that continuing care is provided for this individual; and
 - ✓ Friends, staff, and family members involved in the decision have researched and ruled out less restrictive options.
- While this brochure will introduce you to some of the things you need to know about full guardianship and alternatives, you will likely still need to:
 - ✓ Do additional research
 - ✓ Consult with caseworkers and experts
 - ✓ Ask more questions



More information on how to research alternatives is available on page 11.

Alternatives to FULL Guardianship

What do you need to know?

There are other ways besides full guardianship to provide support to an individual and to establish substitute decision-making in certain areas, like health care and finance.

Alternatives to full guardianship include legal documents (such as Power of Attorney or a Living Will), community services (such as Meals on Wheels or Homemakers), and government programs. All of these may delay or prevent the appointment of full guardians for individuals who are not able to make decisions on their behalf.

Alternatives to full guardianship *may* allow individuals to hold on to some or all of their rights.

It is important that everyone involved in the decision-making process learn about an individual's options before deciding to pursue full guardianship.

Each alternative to full guardianship has advantages and disadvantages.

Choosing an alternative to full guardianship does not mean that you cannot be involved in making decisions about your loved one's care.

What do you need to know?

Learning about alternatives to full guardianship may take effort on your part, but these alternatives may allow your loved ones to keep more of their legal rights and stay involved in decisions about their lives.

A Limited Guardianship

A Limited Guardianship may be necessary if other alternatives are not available. In this case, the court will make an order that gives the guardian power to make decisions in a certain area of an individual's life (such as money management or major health care decisions). The individual will keep the right to make all other life decisions.

Limited guardianship is preferable to full guardianship because it encourages maximum independence for individuals. The court will not always offer limited guardianship as an option. It is okay and appropriate for the petitioner to ask for a limited guardianship as a less restrictive alternative to full guardianship.

How to Research ALTERNATIVES to Full Guardianship

TIPS to help you begin:

Step 1: List the reasons why an individual is considering guardianship. What particular needs or problems will guardianship solve?

Step 2: Make a list of the community resources and unpaid support systems in an individual's life and surrounding areas.

Think creatively and keep an open mind. Explore how family, friends, and community resources can be engaged to help individuals live independently. Do not rule out options yet.

Step 3: Identify a person and/or agency that can help you sort through the supports and resources you have identified. You might enlist someone at your local Area Agency on Aging (AAA) or Disability Rights Center (DRC) or ask a caseworker, a legal services representative, a social service agency staff member or a Department of Health and Human Services (DHHS) staff member for help.

Step 4: Work with this person to create a revised list of support options that will address the needs and problems identified in Step 1.

- Step 5:** As you review and decide upon options, include family members, friends, and/or advocates in the discussion. Bounce ideas off of friends or relatives who are “outside” the situation and may have fresh perspectives about how an individual’s needs might be met.
- Step 6:** Select the support option (or group of options) that allows the individual to hold on to as much independence and decision-making power as possible.
- Step 7:** If full guardianship seems like the most appropriate and desirable option, make sure the benefits of having a full guardian will outweigh the restrictions and loss of rights the individual will experience under full guardianship.
- Step 8:** Remember an individual’s circumstances and support systems change. Revisit solutions and make adjustments as the individual’s condition improves or deteriorates.



Select Alternatives to Full Guardianship

ALTERNATIVES TO FULL GUARDIANSHIP

Least Restrictive Alternative:

Individual retains full independence and full decision-making power. No court involvement.

Community Resources/Unpaid Supports:

- Increased support from family and friends
- Statement of consent to keep parents involved
- Community agencies: e.g. AAA, Meals on Wheels
- DHHS programs and case workers

Money Management Strategies w/o court order:

- Representative payee
- Bill payment services
- Joint checking accounts

Other Alternatives:

- Mediation to help resolve a dispute

Middle Ground:

Individual retains some but not all control over decisions in their life. Limited court involvement.

Common Legal Arrangements:

- Living will
- Special needs trust
- Advance directive - mental health or medical
- Power of attorney – medical or financial

Limited or Temporary Guardianship:

- Limited or temporary medical guardianship
- Limited or temporary residential guardianship

** Limited guardianship can be tailored to address an individual's needs based on what is requested in court.*

Most Restrictive Alternative:

A guardian has full decision-making control over all areas of an individual's life. Requires a court order.

Conservatorship

- Limited, temporary, or full

FULL GUARDIANSHIP

For more information on these alternatives go to:
<http://www.maine.gov/guardianship>

What Have Other Adults *Learned About* ALTERNATIVES to Guardianship?



A Parent's Story –

Parents do not need to become guardians of their adult children in order to stay involved.

“Our daughter, Lisa, has a developmental disability and is turning 18 next month. We have been told if we don’t get guardianship we will no longer be a part of her planning team. This terrifies us.

After we learned what guardianship was we decided as a family not to pursue it. We did not want Lisa to lose all of her rights just so we could stay at the table.”

Alternative: Statement of Consent

“Lisa wrote and signed a Statement of Consent which allows us (her parents) to remain involved in her care planning. This signed statement is now part of Lisa’s case file and Person-Centered Plan. According to this statement, Lisa’s father and I can be contacted about anything related to Lisa’s health and/or services. It also states that her father and I will be invited to every team meeting regarding Lisa’s care.”



Mike's Story –

I don't need a guardian just because I'm disabled in some way.

“I have a serious medical condition that sometimes leaves me barely conscious and in a hospital for weeks. When I am in the hospital, my bills go unpaid, and I am unable to make decisions about my health care. A nurse told my family they should get guardianship over me so they can pay my bills and manage my medical care when I am sick. That sounded ridiculous to me since I am fully competent most of the time. I figured there had to be a better option.”

Alternative: Power of Attorney

“After reviewing the alternatives, I had a long talk with my Uncle Andy about my medical needs. I asked my uncle to become my Power of Attorney. This means my uncle can make decisions in my best interest and handle my medical care during those times when my illness worsens and I go into the hospital. As my Power of Attorney, my Uncle can also manage my bills while I'm in the hospital. When I am healthy, I am in charge of my health care and money.”

What Have
Other Adults
Learned About
ALTERNATIVES
to Guardianship?

What Have
Other Adults
Learned About
ALTERNATIVES
to Guardianship?



Gale's Story –

I don't need a guardian just because I'm old.

"I'm going to be 75 next month. Recently, I lost my best friend and roommate who used to do most of my cooking and cleaning. I can't move around my home like I used to but I refuse to go to a nursing home. My daughter wanted guardianship of me because I have trouble cooking meals and taking care of my apartment. I told her she needed to find some better solutions."

Alternatives: Advance Planning, Community Services

"I had no idea there was so much help out there in my own community. Now, I get Meals on Wheels delivered by a friendly man, and a volunteer from an Area Agency on Aging stops by once a week to help me with my bills.

My great granddaughter will stay with me while she attends college. This way I'll have someone around at night. She'll also help keep the place clean. Her youthfulness will lift my spirits too."

I started planning ahead for my future. I created a Will with my attorney and named my daughter as my Power of Attorney. This means that in the event something happens to me my daughter will be able to make decisions on my behalf."

Tony's Story –

I don't need a guardian just because I made one bad decision.

What Have Other Adults Learned About ALTERNATIVES to Guardianship?

“I have a mental illness I have been able to control most of my life. Last year, I decided I didn't need my meds anymore and stopped taking them. One night my wife and I got into an argument and, before I knew it, I threw a chair through a window and the police were at our door. As I sit in jail, serving time for the havoc I wreaked during my short period without my medication, my family is trying to get guardianship of me. They think guardianship will make me take my meds. They have no faith in me, and I feel helpless. I'm willing to take my meds but I won't take them if my family forces me.”

Alternative: Mediation, Mental Health Advance Directive

“A case worker from mental health services suggested my family and I go to Mediation and that I fill out a Mental Health Advance Directive. This is a document that allows me to make choices about my future mental health treatment in the event that my illness makes me unable to make decisions.

At mediation, my family and I sat around a table and talked about our concerns. The mediator made sure everyone spoke up and was listened to. Mediation helped all of us get our feelings out in a safe, neutral setting. I used the experience to express my wishes for my treatment. The whole experience brought

my family and I closer together. In the end my family decided that guardianship was not the best solution. They realized guardianship would only push me away.

I decided to fill out a Mental Health Advance Directive, which communicates my wishes to my family members and providers. I named my sister as my health agent to carry out my treatment wishes in the event there is a crisis.”

John’s Story –

I need limited residential guardianship because I cannot make informed decisions about where I live.

“I have a developmental disability and live in an apartment by myself with limited support. My neighbors come to my apartment to borrow food but never pay me back. They always seem to show up on the first of the month when I get my check and food stamps.

I want friends so I never say no to them. I have also had minor fires in my apartment due to my limited cooking skills. My parents want to become my guardian due to the lack of safety in my home and the exploitation by my friends.”

Alternative: Limited Residential Guardianship

“After my parents and I discussed their concern for my safety and my friends’ exploitation of me, we discussed the alternatives to full guardianship. We decided that Limited Residential Guardianship would meet my needs. My parents can make decisions about where I live, but I can still make all other decisions, including who I want to be friends with.”

What Have
Other Adults
Learned About
ALTERNATIVES
to Guardianship?



Frank's Story –

As my dementia gets worse, I need someone to manage my finances and take care of my home. I can still make decisions about my medical care and where I live.

“I am 93 years old. Recently, I began to show signs of dementia. Three months ago my wife Bertha broke her hip and moved into a nursing home. Two weeks later, I was hospitalized due to dehydration and acute delirium. When I got out of the hospital, I agreed to a nursing home placement if I could be with my wife.

I've lived in the nursing home for two month now. I have a hard time remembering to pay my bills. Credit card and disconnect notices are piling up, and the roof of our family house is leaking. My doctor said my confusion and forgetfulness will only get worse in the future because of my dementia. My doctor suggested my grandson petition for conservatorship of me. This would give my grandson the power to manage my finances and take care of my home.”

Alternative: Conservatorship

“My grandson was eager to support me. He and I sat down with my doctor to discuss our options. My doctor and I both agreed that, while I am no longer able to manage my finances, I still understand my medical needs and can make informed decisions in many areas of my life.

My grandson agreed to be my conservator. I was relieved. He will now make all decisions about my property and finances. I trust that

he will act in my best interest. I still have the right to make decisions about my health care and where I live. Perhaps in the future, I will need help in these areas of my life, but I did not want to give up my right to make these choices prematurely. Next week, my daughter and grandson will visit me and we will have an advanced planning discussion in order to put a plan in place for my future.”

Jennifer’s Story –

I need limited medical guardianship because I cannot make informed decisions about my healthcare. I also need assistance paying bills.

“I am a young woman with a serious physical health condition that seems to be getting worse each year. I have a hard time getting out of bed each morning and struggle to pay my bills.

As my illness worsens, I don’t have the energy to listen to doctors’ recommendations and make complex decisions about my health care. In addition, I’m falling behind on my bills.”

Alternative: Limited Medical Guardianship, Representative Payeeship

“I sat down with my sister, who has helped me manage my illness in the past. I asked her to become my Limited Medical Guardian. I trust her to make decisions about my medical care. From now on, while my sister may ask me for my opinion about various health care options and medical treatments, she will ultimately make all the final decisions about what health care I receive.

It felt like a lot to ask my sister to take on paying my bills in addition to making decisions about my health care. After discussing my bill paying concerns with a local Social Security representative, I learned that my town has a Representative Payee program. This means that, for a small monthly fee, I can line-up a clerk to pay all of my major bills using funds from my monthly Social Security check. I was very relieved to hear this. Now my bills will get paid. Plus, I will still have control over money I earn myself.”

When is Full Guardianship Appropriate?

Full guardianship may be appropriate in instances when:

- An individual is unable to make or communicate responsible decisions for him or herself;
- A full guardian is absolutely necessary to ensure that continuing care is provided for this individual; and
- Friends, staff, and family members involved in the decision have researched and ruled out less restrictive options.

A Daughter's Story –
Full guardianship is appropriate when it is necessary to ensure that continuing care is provided to an individual who cannot make decisions for him or herself.

“My mother, Dorothy, is a 76 year-old widow who lives in a nursing home. Her diagnoses include Alzheimer's disease and an anxiety disorder. She needs help with bathing, grocery shopping, and preparing meals, and is easily confused, and can't remember recent or remote events. She is unable to communicate her needs or respond to questions. When she does speak, she is incoherent. It is very difficult for others to make sense of what she is saying.

My mother owes the nursing home \$40,000 and may not be able to continue staying there. I am very worried for her and want to make sure someone is looking out for her best interests now that she is no longer able to make decisions for herself.”

Decision: Full Guardianship

“Since my mother no longer has the capacity to plan for her future or to select a power of attorney to make decisions on her behalf, full guardianship was the best and only option for her. I petitioned the court to become my mother’s full guardian so I can make medical decisions for her, pay her bills, and find a place for her to live where her needs will be met.”

What Can an *Individual* EXPECT if He or She has a Full Guardian?

When an individual has a full guardian he or she may lose the ability to make many decisions about his or her life.

Some Rights LOST with a FULL Guardianship:

Under FULL guardianship, an individual may no longer be able to:

- Choose where to live or who to live with
- Control her own money
- Decide to marry
- Smoke or drink alcohol
- Be in a sexual relationship
- Use a cell phone without restrictions
- Use the internet without restrictions
- Read all books or magazines of his or her choice

Some Rights KEPT with a FULL Guardianship:

Under FULL guardianship, an individual will still be able to:

- Vote
- Expect to be treated with respect
- Practice his or her religious beliefs
- Seek termination of guardianship

Frequently Asked QUESTIONS

Q. My dad is experiencing dementia. Should I get full guardianship of him now before his illness gets more serious?

A. Whether you need to seek guardianship of your father at this time will depend on (1) your father's ability to make and carry out responsible decisions right now and (2) the other alternatives that are available to meet his needs and keep him safe.

If your father is still able to make decisions with assistance, it may be helpful for you to sit down with him and do some Advance Planning. You can discuss his wishes for his future, as well as what he doesn't want to happen as his disease worsens. Having these conversations in advance will give your father the power to make decisions about his future. As part of your Advanced Planning conversations, your father may want to update or create a Will, a Health Care Advance Directive, or name someone as a Power of Attorney.

Q. Can guardianship force my brother to take medications? Or stop him from getting into trouble with the law?

A. Guardianship gives another person the authority to make certain decisions on behalf of your brother. The appointment of a guardian by the court will not change your brother's behavior. People under guardianship can still spit out their medications or get into trouble. Guardianship is not a quick fix for all problems.

Q. I've been told guardianship will get my daughter better services. Is this true?

A. Having a guardian does not mean that your child will automatically receive better services or get access to services faster. Getting better services involves advocating for your child and teaming up with people who are willing to help your child get what he or she needs. You may be able to do this without obtaining guardianship.

Q. My sister has a disability. I've been told I have to get full guardianship of her. Is this true?

A. Just because a person has a disability does NOT mean they need a full guardian. Many people with disabilities live independently in the community and make their own decisions. Perhaps your sister will be adequately supported if she receives assistance from natural supports, such as friends and family members, community and social services, or government programs.

Q. If an individual has a FULL guardian can she still make decisions about where she lives and who she is friends with?

A. If an individual wants to retain the right to decide where she lives and who she is friends with, LIMITED guardianship may be a better option than FULL guardianship. LIMITED guardianship allows individuals to hold onto to as many rights as possible. When it comes time to petition the court for LIMITED guardianship, the individual and petitioner tell the court exactly what decisions the guardian will make and what decisions the individual will continue making.

The decision-making-power rewarded to the LIMITED guardian can be very specific. A common example of LIMITED guardianship is a LIMITED Medical Guardianship. Here, the guardian only makes decisions about the individual's health care. The individual retains the right to decide where she lives and who she is friends with.

Q. When is FULL guardianship appropriate?

A. FULL guardianship is appropriate when you have researched and ruled out all other options. See page 21 for more information on when FULL guardianship is appropriate.

Review of KEY Points

Full guardianship is not a quick fix. Full guardianship does not necessarily resolve an individual's personal, medical, or financial problems.

Before deciding to pursue full guardianship, it is important that everyone involved in the decision-making process learn about less restrictive alternatives. These alternatives may allow individuals to hold on to some or all of their rights.

Besides full guardianship, there are other ways to provide support to an individual and to establish substitute decision-making in areas like health care and money management.

Learning about alternatives to full guardianship may take effort on your part, but these alternatives may allow your loved ones to keep more of their legal rights and stay involved in decisions about their lives.

Alternatives to full guardianship include:

- Use of natural or unpaid resources, including family members and friends;
- Community services, such as Meals on Wheels or Homemakers;
- Money management strategies, such as Representative Payee or a Joint Checking Account;
- Legal documents, such as Power of Attorney or a Living Will; and
- Limited Medical or Residential Guardianship.

A limited guardian has control over some but not all areas of an individual's life. Limited guardianship is preferable to full guardianship because it encourages maximum independence for individuals.

Full guardianship may be appropriate in certain situations. However, since full guardianship strips an individual of many of their basic decision-making rights, it is important to consider other alternatives first.

Where to Go for *More Help and Information*

To learn more about alternatives to guardianship:

www.maine.gov/guardianship

For more information on guardianship or conservatorship for persons with Developmental Disabilities contact:

Developmental Disability Services
207- 287-6595 • TTY: 1-800-606-0215

For all other adults contact:

Adult Protective Services Intake
Voice or TTY: 1-800-624-8404

Legal Resources:

Contact the Disability Rights Center (DRC) or Legal Services for the Elderly to learn more about guardianship, including your rights when you are under guardianship and your right to challenge guardianship:

Disability Rights Center: www.drcme.org or call:
1-800-452-1948 (v/tty)

Legal Services for the Elderly: www.mainelse.org
Or call: 1-800-750-5353

What Else Can You DO?

Ask more questions.

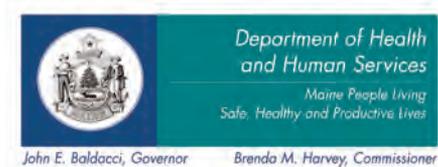
Don't stop here.

Share this booklet with everyone who is considering guardianship. Friends, family, doctors, lawyers . . . anyone!

Feedback:

Please visit www.maine.gov/guardianship and click "Survey" to tell us what you think about this guide. Your feedback will help create better materials!





Anti-Discrimination Notice

The Department of Health and Human Services (DHHS) does not discriminate on the basis of disability, race, color, creed, gender, age, sexual orientation, or national origin, in admission to, access to or operation of its programs, services, activities or its hiring or employment practices. This notice is provided as required by Title II of the Americans with Disabilities Act of 1990 and in accordance with the Civil Rights Acts of 1964 as amended, Section 504 of the Rehabilitation Act of 1973 as amended, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972 and the Maine Human Rights Act.

Questions, concerns, complaints, or requests for additional information regarding civil rights may be forwarded to the DHHS' ADA Compliance/EEO Coordinator, State House Station #11, Augusta, Maine 04333, 207-287-4289 (V) or 207-287 3488 (V), TTY: 800-606-0215. Individuals who need auxiliary aids for effective communication in programs and services of DHHS are invited to make their needs and preferences known to the ADA Compliance/EEO Coordinator. This notice is available in alternate formats, upon request.

Caring...Responsive...Well-Managed...We are DHHS.