



# Office of Children and Family Services

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## Informational Letter

<b>Transmittal:</b>	24-OCFS-INF-10
<b>To:</b>	Local Departments of Social Services Commissioners
<b>Issuing Division/Office:</b>	Division of Child Welfare and Community Services
<b>Date:</b>	July 25, 2024
<b>Subject:</b>	<b>Guardianship of Vulnerable Adults With Active Services</b>
<b>Suggested Distribution:</b>	Local Departments of Social Services Directors
<b>Contact Person(s):</b>	See section IV.
<b>Attachments:</b>	<i>Matter of Kimberly DD.</i>

### Filing References

Previous ADMs/INFs	Releases Cancelled	NYS Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
		18 NYCRR 457.1 (a); (d) (7), (9)	Social Services Law § 62 § 62 (5) (d) Social Services Law § 473 (1) (c) Mental Hygiene Law Article 81		

### I. Purpose

The purpose of this Informational Letter (INF) is to notify local departments of social services (LDSSs) of the October 19, 2023, decision made by the State of New York Supreme Court, Appellate Division, Third Judicial Department relating to the *Matter of Kimberly DD., Alleged to be an Incapacitated Person*. The result of the decision is that an LDSS of residence is responsible to serve as guardian when the subject of the guardianship is receiving medical assistance and public assistance or care in county of residence and is placed in a skilled nursing facility in another county.

### II. Background

In June 2022, a skilled nursing home facility located in Washington County filed a petition seeking the appointment of a guardian for one of its residents who had lived in the facility since 2013. The petition was granted, and the Supreme Court directed the facility to prepare a proposed judgment naming the Washington County Commissioner of Social Services (Washington County) as guardian. Washington

County submitted an objection to the court, contending that the Saratoga County Commissioner of Social Services (Saratoga County) was the more appropriate guardian since the resident of the facility was a resident of Saratoga County prior to their admission to the facility and receives Medicaid assistance through Saratoga County. The court signed the judgment as submitted with Washington County named as guardian, and Washington County appealed. On October 19, 2023, the Supreme Court, Appellate Division upheld Washington County's appeal and Saratoga County was named guardian.

### III. Program Implications

LDSSs are reminded that, under Social Services Law § 62(5)(d), when a person who was admitted to a nursing home located in an LDSS district other than the LDSS district in which they were then residing is or becomes in need of medical assistance, the LDSS district *from which* they were admitted shall be responsible for providing such medical assistance. The statute also directs the residence LDSS district with providing "public assistance or care."

The LDSS district of residence must also provide "protective services" to an individual in need, including services "arranging, when necessary, for ... guardianship ... either directly or through referral to another appropriate agency" (Social Services Law § 473[1][c]; see 18 NYCRR 457.1[a]; [d][7], [9]).

### IV. Contacts

Please contact the regional representative below or call the Bureau of Adult Services at 518-473-7857 with any questions regarding this informational letter.

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**/s/ Gail Geohagen-Pratt**

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**Issued by:**

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