

# **ST. CLAIR COUNTY COMMUNITY MENTAL HEALTH AUTHORITY**

## **ADMINISTRATIVE PROCEDURE**

Date Issued **03/23**

Page 1

<b>CHAPTER</b> Service Delivery		<b>CHAPTER</b> 03	<b>SECTION</b> 003	<b>SUBJECT</b> 0020
<b>SECTION</b> Client Services		<b>SUBJECT</b> Guardianship		
<b>WRITTEN BY</b> T. Matthews/L.K.Morse		<b>REVIEWED BY</b> Amy Kandell		<b>AUTHORIZED BY</b> Tracey Pingitore

I. **APPLICATION:**

- ☐ SCCCMHA Board
- ☒ SCCCMHA Providers & Subcontractors
- ☒ Direct-Operated Programs
- ☒ Community Agency Contractors
- ☒ Residential Programs
- ☒ Specialized Foster Care

II. **PURPOSE STATEMENT:**

St. Clair County Community Mental Health Authority (SCCCMHA) staff will process guardianship in accordance with the procedures established in the Probate Court and with the Mental Health Code.

III. **DEFINITIONS:**

- A. **Alleged:** A declare or stated to be described condition. For the purposes of this administrative procedures a medical and /or clinical diagnosis.
- B. **Guardianship:** The legal appointment of a substitute decision maker. There are two types of guardianship. Guardianship – Legally Incapacitated Individual and Guardianship – Developmentally Disabled Individual.
- C. **Petitioner:** An individual who initiates the process of obtaining guardianship.
- D. **Respondent:** The individual who is the subject of a petition for guardianship.
- E. **Interested Person or Entity:** An adult relative or friend of the “respondent”, an official or representative of an agency or association concerned with the individual’s welfare, including protection from neglect, exploitation, and abuse.
- F. **Individual with Intellectual/Developmental Disability:** An individual with mental or physical impairment(s) or a combination of mental and physical impairments which can be expected to continue indefinitely and result in substantial functional limitations of one’s ability to perform basic life activities. (See Mental Health Code 330.1100a, Sec. (25) for expanded definition.)
- G. **Incapacitated Person:** A mentally ill and/or physically incapacitated and/or mentally incompetent person, who is so impaired that he or she either poses an immediate and substantial danger to his or her own health and safety or is endangering the health and safety of the public.

<b>CHAPTER</b> Service Delivery		<b>CHAPTER</b> 03	<b>SECTION</b> 003	<b>SUBJECT</b> 0020
<b>SECTION</b> Client Services		<b>SUBJECT</b> Guardianship		

- H. Legally Incapacitated Individual, per Michigan Law -an individual with any condition which impairs the person to the extent of lacking sufficient understanding or capacity to make or communicate informed decisions. Can include: mental illness, mental deficiency, physical illness or disability, chronic use of drugs or chronic intoxication.
- I. Competency: The quality of being competent, adequacy, possession of required skill, knowledge, qualifications. (The person's ability to handle his or her own affairs in an adequate manner.)
- J. Full Guardian: A guardian who may possess all the legal rights and powers provided of the person under certain circumstance.
- K. Limited Guardian: A guardian who possesses fewer than all of the legal rights and powers of a plenary guardian, and whose rights, powers, and duties have been specifically enumerated by court (such as medical only, financial only...) for a legally incapacitated adult or minor. (This is not the same as a representative payee).
- L. Plenary Guardian: A guardian who possesses the legal rights and powers provided of the person, or the estate (if also awarded fiduciary guardian), or both for an intellectual/developmentally disabled individual. A Plenary Guardian must have an order from the court to execute a Do Not Resuscitate.
- M. Partial Guardian: A guardian who possesses fewer than all of the legal rights and powers of a plenary guardian, and whose rights, powers, and duties have been specifically enumerated by court (such as medical only, financial only...) for a developmentally disabled individual. (This is not the same as a representative payee).
- N. Stand-by Guardian: The legal appointment of a substitute decision maker in the event the Guardian is unable to perform their duties only for individuals who are intellectual/developmentally disabled.
- O. Durable Power of Attorney: A legal document that indicates an individual has been selected to handle the affairs of a principle individual, if the principle individual become mentally incompetent. The durable power of attorney can be called the General Power of Attorney, Limited Power of Attorney or Medical Power of Attorney and may be referred to as an "agent." If given medical/health authority, it may be referred to as "Patent Advocate" when medical or health related authority is given.
- P. Conservator: An individual who has been appointed by the Court to help an individual manage his or her property and financial affairs when the individual is unable to manage such affairs. (If a conservator is appointed, the conservator will make decisions for the individual, except for, to make a will).

#### IV. STANDARDS:

- A. The need for and scope of guardianship services provided by this agency shall take into account the individual's abilities and shall be advocated for only to the extent necessitated by the individual's actual mental and adaptive limitations to provide protection from neglect, exploitation, and abuse.

<b>CHAPTER</b> Service Delivery		<b>CHAPTER</b> 03	<b>SECTION</b> 003	<b>SUBJECT</b> 0020
<b>SECTION</b> Client Services		<b>SUBJECT</b> Guardianship		

- B. Section 628 of the Mental Health Code mandates that a current service program provider shall not be appointed guardian of an individual with a Developmental Disability unless extraordinary circumstances exist.
- C. Guardianship status should be reviewed when:
  - 1. A determination has been made that perhaps the guardian is no longer needed.
  - 2. Circumstances are such that it may be appropriate for a different guardian to be appointed. Such circumstances include:
    - a. A suspected misappropriation of the individual's funds.
    - b. The safety of the individual is at risk.
    - c. Lack of responsiveness is affecting the individual's ability to meet his/her goals or potential in an area.
    - d. The current living situation is a hindrance to improvement for the individual.
- D. For an individual with Intellectual/Developmental Disability, the guardianship petition process cannot be submitted no more than 4 weeks prior to the individual turning 18 years of age.

V. PROCEDURES:

A. **Petition Process – Individual with Intellectual/ Developmental Disability**

**Primary Caseholder**

- 1. Discusses the need and scope (plenary or partial) for a guardian with the individual served, Planning Team members and potential petitioner.
- 2. Advises potential petitioner as to the roles and responsibilities of a guardian (guardian of the person, guardian of the estate, etc.).
- 3. Links with family to ensure that a psychological evaluation has not been completed within the last year by another provider. If psychological testing is needed, contacts designated staff for approval to have a psychological evaluation completed.
- 4. Provides Petitioner with the following forms and assists with completion.
  - a. "Petition for Appointment of Guardian, Individual with Alleged Developmental Disability" form (PC 658) - the most current version of the form may be found at: <https://courts.michigan.gov/Administration/SCAO/Forms/courtforms/pc658.pdf>
  - b. Psychological Evaluation (results performed within last year for individuals with ID or DD).
  - c. Summary Report for Guardianship needs to be completed by CMH staff. (Form may found

<b>CHAPTER</b> Service Delivery		<b>CHAPTER</b> 03	<b>SECTION</b> 003	<b>SUBJECT</b> 0020
<b>SECTION</b> Client Services		<b>SUBJECT</b> Guardianship		

in the St. Clair County Community Mental Health Forms Index - Form #067.)

### **Physician**

5. Completes the Report of Physician, indicating the grounds upon which the opinion for a guardian is based. The form can be found at:  
<https://courts.michigan.gov/4a7eea/siteassets/forms/scao-approved/pc630.pdf>

### **Primary Caseholder**

6. Submits all documents together (completed petition, Report of Physician, psychological evaluation, and summary report) to Probate Court and informs the individual being served and Petitioner of this status.

### **Probate**

7. Sends to the family, petitioner, & CMH staff notification of hearing – on the letter, the lawyer who is appointed for the person in need of a guardian is indicated.
8. Informs the individual served when a court appointed attorney will be contacting them to discuss their rights, including attending the hearing.

NOTE: The individual being served must be present at the court hearing, unless appointed attorney recommends no attendance.

### **Primary Caseholder**

9. Briefs individual being served and petitioners / significant others on process of hearing. (See Exhibit A, "Guardianship: Hearing Procedures".)
10. Attends court hearing to testify the information provided in the "Summary Report".
11. Obtains signatures from newly appointed guardian on all necessary "Consent Forms" and adds information on guardianship to electronic health record, Oasis.

### **Records Staff**

12. Ensures guardianship papers are scanned/uploaded into the electronic health record, OASIS.

## **B. Petition Process – Legally Incapacitated Person**

### **Primary Caseholder**

1. Discusses the need for guardianship with the individual's Planning Team, the individual and Petitioner.

<b>CHAPTER</b> Service Delivery		<b>CHAPTER</b> 03	<b>SECTION</b> 003	<b>SUBJECT</b> 0020
<b>SECTION</b> Client Services		<b>SUBJECT</b> Guardianship		

2. Advises potential Petitioner as to the roles and responsibilities of a guardian.
3. Provides Petitioner with the following forms and assists with completion.
  - a. "Petition for Appointment of Guardian of Incapacitated Individual" (PC 625) - the most current version of the form may be found at:  
<https://courts.michigan.gov/Administration/SCAO/Forms/courtforms/pc625.pdf>
4. Informs Petitioner of the required fees. (Can be waived by filing a "Fee Waiver Request". If CMH staff is serving as the petitioner then this form is not completed) The most current version of the form may be found at:  
<https://courts.michigan.gov/Administration/SCAO/Forms/courtforms/mc20.pdf>

### **Primary Caseholder**

5. Submits completed petition to Probate Court and informs the individual being served and Petitioner of status.
6. Informs individual being served that a court representative will be contacting them to discuss their rights.
7. Briefs individual being served and significant others on hearing process. (See Exhibit A, "Guardianship: Hearing Procedures".)
8. Obtains signatures from newly appointed guardian on all necessary "Consent Forms" and adds information on guardianship to electronic health record, OASIS.

### **Records Staff**

9. Ensures guardianship papers are scanned/uploaded into the electronic health record, OASIS.

## **C. Conservator For Legally Incapacitated Person**

### **Primary Caseholder**

1. Discusses the need for a conservator with the individual being served, Planning Team and Petitioner.
2. Provides Petitioner with the Petition for Appointment of Conservator and/or Protective Order (PC 639) - the most current version of the form may be found at:  
<https://courts.michigan.gov/Administration/SCAO/Forms/courtforms/pc639.pdf>
3. Forwards documents to Probate Court.

<b>CHAPTER</b> Service Delivery		<b>CHAPTER</b> 03	<b>SECTION</b> 003	<b>SUBJECT</b> 0020
<b>SECTION</b> Client Services		<b>SUBJECT</b> Guardianship		

4. Obtains signature from new conservator on all necessary financial papers.
5. Ensures all documents are scanned/uploaded into the electronic health record, OASIS.

**D. Petition Process for Review and/or Modification of a Guardianship**

**Primary Caseholder**

1. Discusses the need to end a guardianship because it is no longer needed with the individual, the planning team and petitioner.
2. Provides petitioner with following form(s) to end or modify guardianship: Petition to Termination/Modification Guardianship ([pc675](#)), Petition to Termination/Modification Conservatorship ([pc676](#)) or Petition to Terminate/Modify Guardian for Developmentally Disabled Individual ([pc677](#)) - the most current version of the forms may be found at: <https://courts.michigan.gov/Administration/SCAO/Forms/Pages/Probate-Court-Index.aspx>
3. Submits all documents to Probate Court.
4. Ensures any subsequent orders are put into the individual's record.

Or

5. Discusses the need to change the guardian to a different individual with appropriate parties.

**Petitioner**

6. Using the appropriate form, (see the following forms listed) request another guardian be appointed. Forms to be used for petitions for new guardians/conservators: Petition to Termination/Modification of Guardian ([pc675](#)), Petition to Termination/Modification Conservatorship ([pc676](#)) or Petition to Terminate/Modify Guardian for Developmentally Disabled Individual([pc677](#)) - the most current version of the forms may be found at: <https://courts.michigan.gov/Administration/SCAO/Forms/Pages/Probate-Court-Index.aspx>

**VI. EXHIBITS:**

- A. Guardianship: Hearing Procedures

**VII. REFERENCE:**

- A. St. Clair County Court website
- B. Guardians' Rights and Responsibilities – Judge John D. Tomlinson (2.1.19)

<b>CHAPTER</b> Service Delivery		<b>CHAPTER</b> 03	<b>SECTION</b> 003	<b>SUBJECT</b> 0020
<b>SECTION</b> Client Services		<b>SUBJECT</b> Guardianship		

VIII. REVISION HISTORY:

Dates issued 06/88, 08/90, 10/92, 10/95, 03/98, 02/00, 12/01, 12/03, 12/05, 12/07, 10/08, 10/10, 08/12, 07/13, 07/14, 07/15, 09/16, 07/18.

St. Clair County Community Mental Health Authority

**GUARDIANSHIP: HEARING PROCEDURES**

HEARING PROCEEDINGS:

- Primary case holder- Brief parents/petitioners
- Petitioner/client/primary case holder/assistant - Meet court appointed attorney/Guardian Ad Litem
  - a. Checks paperwork
  - b. Questions client as to level of understanding
- Petitioner/client/primary case holder/assistant - seated at front table
  - a. Petitioner/client/primary caseholder - sworn in
- JUDGE questions petitioner:
  - a. Relationship and interest of the petitioners
  - b. Name/Address
  - c. Educational status of individual served (only for persons with an intellectual/- developmental disability)
  - d. Residential status
  - e. Birth-date of individual served
  - f. Facts and reasons for need of guardianship
  - g. Other interested parties (i.e., presumptive heirs, etc.)
  - h. Approximation of the recipient's estate and source of income
- JUDGE questions primary case holder:
  - a. Originator of the Summary Report
  - b. Name
  - c. Credentials
- JUDGE asks primary case holder to report findings of the assessment:
  - a. Judge may ask other questions –
    1. I.Q. Score (only for persons with a developmental disability)
    2. Benefits Status
    3. Guardianship Status of the Person and Estate
    4. Conservator Status
    5. If believed guardian is needed and if in agreement of support for Petitioner becoming the guardian.
    6. Will ask about preferences