

SHIAWASSEE COUNTY COMMUNITY MENTAL HEALTH AUTHORITY
POLICY AND PROCEDURE MANUAL

Section: Recipient Rights
Policy Number: 30
Subject: **Guardianships**

Effective Date: 11/20/00
Last Revision Date: 5/17/16
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Policy

It is the policy of Shiawassee County Community Mental Health Authority (SCCMHA) that:

1. The agency, its employees and contract providers will follow all legal requirements outlined in the Mental Health Code in assessing an individual's needs for a legal court appointment of guardians.
2. In accordance with all Michigan legal requirements the agency, employees, and contract providers will use and refer consumers to the appropriate protective service providers including but not limited to, the Michigan Department of Health and Human Services (MDHS), Recipient Rights, Protection and Advocacy, courts and law enforcement agencies as required by local, state, and federal standards. Under all circumstances the safety and well being of the consumer will be the primary concern.
3. The agency, its employees, and contract providers believe that both treatment and life issues should be provided in the least restrictive environment that is reasonable for its consumers. Legal guardianship is one of the most restrictive situations that can be imposed on a human being. Thus legal guardianship should only be considered when all other less restrictive assistance has been unsuccessful.
4. The agency, its employees, and contract providers will make all appropriate clinical efforts to provide the skills and related support services so that less restrictive options will be the first options in an attempt to avoid legal guardianships whenever possible.
5. The Person Centered Planning process encourages advocates for the consumer to be present and have input into the design of services and the ability of the consumer to make life choices as the consumer's skills and abilities develop.

Purpose

1. To ensure that staff members and independent contract providers are aware of the responsibilities associated with the appointment of a guardian.

2. To ensure that staff members are familiar with the process of filing the appropriate petitions for court appointment of guardians.
3. To ensure that staff members and independent contract providers are cognizant of the ramifications of assisting the suspension of individual rights to choice and the effects of using a system designed to be one of the most restrictive methods to control consumers.

Application

This policy applies to all staff members and independent contract providers whose job descriptions, legal requirements or ethical treatment issues require that in certain circumstances the employer's agents will assist in the process of petitioning the court in the appointment of guardians.

Standards

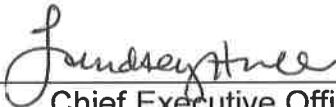
1. All consumers should have individual preferences protected as much as possible. Those preferences should be determined and reflected through the Person Centered Planning process. In addition, all assessments of an individual's ability to make reasonable choices should include, but not be limited to, service documentation, clinical notes, medical issues, and individual observation.
2. In the event that consent and individual choices become an issue to be addressed, any recommendations for assistance will be at a level that is considered the least restrictive appropriate level.
3. In assisting consumers, family members, interested parties, and the court system providers will base their recommendations on data available with the utmost concern for the individual consumer's safety and vulnerabilities. Any review/assessment contributed by staff members will extend beyond service planning and treatment issues. Again the primary assessment will address the safety and well being of the consumer.
4. Under no circumstances will SCCMHA be named as guardian, payee, personal representative, conservator, or trustee for a consumer of SCCMHA services.
5. Qualifications of guardian; preference (330.1628):
 - a. The court may appoint as guardian (and/or payee or personal representative) of an individual with a developmental disability any suitable individual or agency, public or private, including a private association capable of conducting an active guardianship program for an individual with a developmental disability. The court shall not appoint the department of mental health as guardian or any agency, public or private that is directly providing services to the individual, unless no other suitable individual or agency can be identified.

- In such instances, guardianship by the provider shall only continue until such time as a more suitable individual or agency can be appointed.
- b. Before the appointment, the court shall make a reasonable effort to question the individual concerning his or her preference regarding the person to be appointed guardian (and/or payee), and any preference indicated shall be given due consideration.
6. A recipient shall be permitted, to the maximum extent feasible and in any legal manner, to conduct personal and business affairs and otherwise exercise all rights, benefits, and privileges not divested or limited.
 7. An adult recipient and a minor when state law allows consent by a minor shall be presumed legally competent. The resumption may be rebutted only by court appointment of a guardian or exercise by a court of guardianship powers and only to the extent of the scope and duration of that guardianship. A provider shall do all of the following:
 - a. Presume the recipient is legally competent if he or she does not have a guardian. A provider shall also presume a recipient with a limited guardian is legally competent in all areas which are not specifically identified as being under the control or scope of the guardian.
 - b. Not institute guardianship proceedings, unless there is sufficient reason to doubt the recipient's comprehension, as provided under these rules and the policies and procedures of the provider.
 - c. When a recipient's comprehension is in doubt, justification for petitioning the probate court for guardianship consideration shall be entered in the recipient's clinical record.
 - d. Not petition for, or otherwise cause the filing of, a petition for guardianship of greater scope than is essential.
 - e. Petition or cause a petition to be filed with the court to terminate a recipient's guardian or narrow the scope of the guardian's powers when the recipient demonstrates he or she is capable of providing informed consent.
 8. A provider shall not interfere with the right of a recipient to enter into a marriage contract or obtain or oppose a divorce.

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Approved by: 
Board Chairperson

9-26-2016
Date


Chief Executive Officer

9/28/16
Date

Review/Revision Dates:

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2001 – 2008	Review by Board
5/1/09	New formatting
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