GUIDE FOR MICHIGAN'S

Adult Guardianship Process

MHA
Michigan Health &
Hospital Association

Introduction

The Michigan Health & Hospital Association (MHA) created the Guide for Michigan's Adult Guardianship Process to serve as a comprehensive policy document summarizing the adult guardianship process in Michigan. The content throughout is meant for hospital and health system leaders and staff as they navigate the guardianship process for hospitalized patients.

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- AARP of Michigan
- Kelley Cawthorne
- The MHA Hospital Attorneys Group
- The Michigan Department of Health and Human Services, Supportive Adult Services Section
- The Michigan Elder Justice Initiative
- The Michigan Probate Judges Association

Questions or comments about this document should be directed to the MHA policy team by visiting mha.org/contact-mha-policy.

TIP Tips have been provided throughout the document and are denoted by this symbol.

PLEASE NOTE: This document provides guidance for the **adult** guardianship processes and does not address guardianship for minors or developmentally disabled individuals.

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Contents

What is a guardian? 4

What are the responsibilities of a guardian? 4

When to consider guardianship 4

When to apply for guardianship 5

How can I determine whether a patient has a guardian/conservator, and what the extent of their decision-making powers are 5

Who can be a guardian? 6

Finding a guardian 6

Are there different types of guardianship? 7

- Full guardianship 7
- Temporary emergency guardianship 7
- Limited guardianship 8

Are there alternatives to guardianship? 8

- Durable Power of Attorney (DPOA) 8
- Conservator 9
- Healthcare Power of Attorney (Also known as a healthcare proxy, medical directive, patient advocate or durable power of attorney for healthcare) 9
- Is Surrogate Consent an alternative to guardianship? 10

What is the process for obtaining guardianship? 10

- File petition 10
- Pay filing fee 12
- Submit documents 12

What happens after a guardianship petition is filed? 12

- Pre-hearing procedures 12
- Hearing procedures 13
- Court decision & guardian appointment 13

How long does it take to get guardianship? 14

Is there a way to get an expedited guardianship hearing? 14

Can guardians be paid? 14

What to do if a nursing home, or other facility, is requiring appointment of a guardian before accepting an admission to their facility 14

- Contact the nursing home administrator 15
- Talk with Michigan Department of Licensing & Regulatory Affairs 15
- Contact the Attorney General's Office – Division of Health Care Fraud 15
- Contact the Michigan Long-Term Care Ombudsman Program 15

What should I do if a patient already has an appointed guardian but they are unresponsive? 16

Adult Protective Services and Guardianship 16

- What is the relationship between Adult Protective Services (APS) & guardianship? 16
- What is the APS process? 16
- When should I involve APS? 17
- Am I required to involve APS if I want to file a guardianship petition? 17

What is the role of a Long-Term Care Ombudsman? 17

Glossary of Terms 18

Endnotes 19

What is a guardian?

A guardian takes care of an incapacitated adult's personal needs, including decision-making related to medical and placement needs when an individual is unable to do so.[1] The *Notice of Rights to Alleged Incapacitated Individual (PC 626)*[2] outlines the rights an incapacitated individual maintains, even with the appointment of a guardian. More information about this document (PC 626) can be found on page 10.

What are the responsibilities of a guardian?

- The guardian is responsible for the incapacitated person's care, custody and control.[3]
- To the extent granted by court order, a guardian may have all of the following responsibilities:[3]
  - Establish the individuals place of residence, including discharge planning related to post-acute placement, if applicable.
  - Make decisions related to the individual's care, comfort and maintenance.
  - Secure services to ensure best possible mental and physical well-being.
  - Care for clothes, furniture, vehicles and other personal effects.
  - Consent to treatment for medical, mental health or other professional care.
    - A guardian **cannot** consent or approve inpatient hospitalization unless expressly granted in court orders.
    - Respond to health care providers' requests for information or devisions in a timely manner.
  - Execute, reaffirm or revoke a do-not-resuscitate order under specific circumstances.
  - Execute, reaffirm or revoke a non-opioid directive form, or physician orders for scope of treatment.
  - Report the condition of the individual and their estate.
  - Pay a conservator, if one is appointed.

When to consider guardianship

A guardian is necessary when a person lacks the understanding or capacity to make or communicate informed decisions, at which time they become "incapacitated."[1]

Incapacitation may be due to impairment by reason of:[4]

- Mental illness
- Mental deficiency
- Physical illness or disability
- Chronic use of drugs
- Chronic intoxication
- Other

The court is *only* allowed to appoint a guardian if the judge finds by *clear and convincing evidence* that the individual is "incapacitated" and appointing a guardian is necessary to provide continuing care and supervision for the individual.[5]

> TIP The probate courts want to preserve the rights of the incapacitated individual to the greatest extent possible and prefer to avoid appointing a guardian if a Durable Power of Attorney (DPOA) or healthcare POA is sufficient to make placement decisions on behalf of the incapacitated individual. This may be helpful to consider when determining if guardianship is needed. Refer to the section titled ***Are there alternatives to guardianship?*** for additional details.

When to apply for guardianship

If there are concerns that an individual cannot make or communicate informed decisions which can be supported by medical professionals, such as an attending physician, this may be an appropriate time to file for guardianship.

Before beginning the process of appointing a guardian, determine whether the individual already has a guardian or a healthcare power of attorney. If a healthcare power of attorney is already in place, the court may not appoint a guardian. Refer to the section titled ***Are there alternatives to guardianship?*** for additional details.

> TIP **Do not** wait until the time of discharge to initiate the guardianship process
>
> Please initiate the guardianship process as soon as the need for a decision maker is identified. This will ensure the discharge process can be completed in a timely fashion and is not delayed due to pending court proceedings.

How can I determine whether a patient has a guardian/conservator, and what the extent of their decision-making powers are?

- Ask the patient's family and/or friends if they are aware of a formal appointment of a guardian or conservator.
- If the individual came from another facility such as an Extended Care Facility, Adult Foster Care or Skilled Nursing Facility, those organizations will likely be aware of any guardianship arrangement and may be able to provide additional details. Contact them directly to inquire.
- Full details of guardianship arrangements *(Letters of Guardianship, PC 633)* are public record and can be accessed by calling the probate court in the county where the patient resides.[7, 31]

> TIP It is possible that calling the probate court in the county where the individual currently resides will not yield information, perhaps because the guardianship petition was approved in a different county. In these instances, you may wish to contact other counties where the individual previously lived to try to find more information.

Who can be a guardian?

- Many individuals can serve in this role if they accept the responsibilities for guardianship. Potential parties may include:
  - Family members – spouse, children, parents, relatives.
  - Neighbors or friends.
  - Public/professional guardian.
- The court is required to appoint a suitable and willing guardian based on the priority established by the Estates and Protected Individuals Code:[6]
  a) An individual who was previously appointed as the guardian for the incapacitated adult in another state.
  b) An individual selected by the incapacitated adult to serve as the guardian.
  c) An individual selected by the incapacitated adult through durable power of attorney or another legal document.
  d) An individual selected by the incapacitated adult as either a 'patient advocate' or 'attorney in fact' in a durable power of attorney.
- If there is no guardian identified based on the above criteria or nobody is suitable or willing to serve, the court may appoint an individual who is related to the incapacitated adult to serve as the guardian in the following order of preference:[6]
  a) Spouse; including a person nominated by will or other writing signed by a deceased spouse.
  b) An adult child.
  c) A parent; including a person nominated by will or other writing signed by a deceased parent.
  d) A relative who the incapacitated adult has lived with for more than six months before the filing of the petition.
  e) A person nominated by an individual currently caring for or paying benefits to the incapacitated adult.
- If none of those listed above are suitable or willing to serve, the court may appoint any competent person who is, including a professional guardian.[6]

Finding a guardian

- Refer to prioritization criteria in the section above titled ***Who Can be a Guardian*** for individuals who are eligible to serve as a guardian.
- Work with the patient's family and/or friends to determine interest level and capacity to serve as the individual's guardian. The guardianship petition requires a guardian be named at the time of filing.
- If no family members or friends are willing to serve as a guardian, some of the Michigan Probate Courts have a list of individuals who can be contacted.[7]

> **TIP** There is a statewide shortage of public guardians. If available, utilizing a friend or family member before pursuing a public guardian will be the best option.

- Adult Protective Services (APS) may be able to assist with finding a guardian by providing information about public or professional guardians in the area. Their primary responsibility, however, is focused on finding guardians for open APS investigations.

Are there different types of guardianship?

Yes. Before, or at the time of filing a guardianship petition, the probate court is required to provide explanations about guardianship and offer alternatives to guardianship.[8] The types of guardianship are outlined below and the ***Alternatives to Guardianship*** section contains additional details.

Items to consider when determining if a guardian is needed and what type may be most appropriate:

- If applicable, who has been making healthcare decisions for the individual during their hospitalization? Consider why the family is securing guardianship **now** versus when the individual was initially admitted to the hospital.
- Why is guardianship necessary? (i.e. to make medical decisions, placement decisions, end of life decisions, etc.).

FULL GUARDIANSHIP

- A full guardian should be appointed when an individual is totally incapacitated and is unable to care for themselves, including making decisions about daily activities.[5]

TEMPORARY EMERGENCY GUARDIANSHIP

- Temporary emergency guardianship may be granted during an emergency situation when an individual cannot wait for a full guardianship hearing.[9]

> TIP The probate court has a high bar for determining whether a situation is an emergency and usually refers to these situations as "life or limb," meaning the client's life is at risk without a decision being made on their behalf immediately. Do not file for a temporary emergency guardianship unless it is truly an emergency.

- To be eligible for a temporary emergency guardianship hearing, the petitioning individual must specify **in detail** the emergency that exits, for which no other person has the authority to act.[10]
  - Temporary emergency guardianship may be requested by denoting on the *Guardianship Petition (PC 625)*.[11, 12]

> TIP The more specific healthcare providers can be when documenting the need for a guardianship, the better. Particularly in cases where a temporary or emergency hearing is being requested.
>
> TIP When filing a temporary emergency guardianship petition, the judge needs to be convinced why the patient cannot wait for a full guardianship hearing to occur.

- Unless the individual has chosen legal counsel, the court will appoint a guardian ad litem to represent the legally incapacitated person before the court.[8]
  - Refer to the section below titled ***Pre-hearing Procedures*** for more information about the role and responsibilities of a guardian ad litem.
- Temporary emergency guardianship hearings are typically scheduled much sooner than full guardianship hearings, although there is no requirement of how soon a temporary emergency guardianship hearing must be held following submission of the *Guardianship Petition (PC 625)*.
  - Within 28 days of appointing a temporary emergency guardian, a full guardianship hearing must be held.[13]

> TIP The 28-day requirement will not apply if the request for a temporary guardian is denied.

- If a temporary emergency guardian is appointed, the judge will sign an *Order Appointing Temporary Guardian of Legally Incapacitated Individual (PC 632),*[14] to provide limited decision-making power to the temporary guardian until the full guardianship hearing can be scheduled.[10]

LIMITED GUARDIANSHIP

- A limited guardian is appointed when an individual lacks the capacity to do some of, but not all, the necessary tasks to care for themselves.[5]
- In a limited guardianship, the incapacitated individual maintains all of their rights, **except** for those that are explicitly outlined by the courts.[15]
- Limited guardianship may be used strictly for the purposes of patient placement decisions, including admission to sub-acute rehab or a long-term care facility.[9]

> TIP Consider applying for **limited guardianship** rather than full guardianship when using it for the sole purpose of patient placement. This will ensure the individual maintains as many rights as appropriate, while helping expedite the probate court process and allowing the patient to receive needed services.

- A petitioner may initially file for limited guardianship and change to full guardianship at a later date in the event that patient circumstances change.[9]

Are there alternatives to guardianship?

Yes. Before filing a guardianship petition, the court is required to provide information about guardianship and offer alternatives to full guardianship, including an explanation of each alternative.[8]

- Many alternatives to full guardianship are less intrusive for the incapacitated adult and require less court involvement.[39]

> TIP Petitioning the probate court for a guardianship or conservatorship should be the last option and only done in extenuating circumstances.

DURABLE POWER OF ATTORNEY (DPOA)

- The assignment of a DPOA is made by appointing, in writing, another individual that will assume responsibility over another individual's finances in the event they are no longer able to manage them.[15]
  - To execute a DPOA, an individual must be mentally competent, understand what they are signing, and must do so voluntarily.[39, 40]
- An individual can give as much or as little authority to the DPOA as they wish, including what they can do and when the document becomes effective.[15, 40]
- If a DPOA is not already in place at the time of incapacitation, consider another mechanism to assign decision-making authority.

> TIP Once an individual becomes incapacitated, a DPOA cannot be appointed as it requires the individual to execute the paperwork while they are still of sound mind. If this type of decision-making authority is needed following an individual's incapacitation, a conservatorship should be pursued.[41]

CONSERVATOR

- A conservator is appointed by a judge to manage the finances, assets and property of an incapacitated individual including asset management, bill payment or general financial decision making after a person is considered incapacitated.[15, 20]
- The main difference between a DPOA and a conservatorship is that a DPOA is self-appointed and established **before** an individual's incapacitation whereas a conservatorship is court-designated and established **after** incapacitation.[41]
    - Please note, one person can serve as both the guardian and the conservator for an incapacitated adult.[1] These two roles do not need to be served by separate people.
- More information about the duties and powers of a conservator can be found in the *Estates and Protected Individuals Code*.[42]

Do I need a conservator AND a guardian?

- It is not required to have both a conservator and a guardian, however, there are situations where this may be necessary.
- Conservators and guardians have separate responsibilities. A conservator is responsible for managing the **finances and assets** of an incapacitated individual and a guardian is responsible for an individual's **healthcare** decision making and general well-being.[43]
- If an incapacitated adult has a guardian but no conservator, the guardian may perform some duties normally done by a conservator without the necessity of having a conservator appointed, such as handling regular income (e.g. pension or social security).[3, 39]

HEALTHCARE POWER OF ATTORNEY (POA), ALSO KNOWN AS A HEALTHCARE PROXY, MEDICAL DIRECTIVE, PATIENT ADVOCATE OR DURABLE POWER OF ATTORNEY FOR HEALTHCARE

- A healthcare POA is a special type of Power of Attorney by which an individual designates, in writing, another individual who can make decisions related to care, custody, medical or mental health treatments when the individual is unable to participate in these decisions.[51]
    - To execute a designation of patient advocate, the individual establishing this designation must be of sound mind, and the document should be executed voluntarily.[51]
- The individual can give as much or as little authority to their patient advocate as they wish, including an individual's wishes regarding medical treatment options.[15, 44]
- If a POA is not already in place at the time of incapacitation, consider another mechanism to assign decision-making authority.
- Please note, healthcare providers cannot require a patient advocate designation as a condition of providing, withholding, or withdrawing care, custody or medical treatment.[57]

> TIP A court may not appoint a guardian to **make medical or mental health treatment decisions** if there is already a patient advocate in place.[5]

Do I need a healthcare power of attorney AND a guardian?

- Rarely. If a healthcare POA is performing their duties appropriately, the court cannot give a guardian power to make medical treatment decisions.[5, 33]

If I don't have a healthcare power of attorney, do I need a guardian?

- No. This is a common misunderstanding. If individuals/nursing home residents are able to participate in medical decision making, there is no need for them to have a patient advocate or a guardian.[33]

The below table may provide a helpful visualization of how each of these roles differ and how and when they are appointed.

	HEALTHCARE DECISION-MAKING	FINANCIAL DECISION-MAKING
Self-appointed prior to incapacitation	Healthcare POA	Durable Power of Attorney
Court-appointed after incapacitation	Guardianship	Conservatorship

TIP The probate courts want to preserve the rights of the incapacitated individual to the greatest extent possible and prefer to avoid appointing a guardian if a DPOA or Healthcare POA can make placement decisions on behalf of the incapacitated individual. This may be helpful to consider when determining if guardianship is needed.

IS SURROGATE CONSENT AN ALTERNATIVE TO GUARDIANSHIP?

- In the event that no guardian has been appointed, surrogate consent laws grant an individual the ability to make healthcare decisions for a loved one through non-judicial rule of law.[45]

PLEASE NOTE: At the time of publication, Michigan does not have a Surrogate Consent law, meaning Michigan residents may not use this approach in lieu of a guardianship hearing.

What is the process for obtaining guardianship?

Each county probate court may have different processes or required documentation for obtaining guardianship. Please refer to the guidance provided by your local probate court.[16]

1. FILE PETITION

Who can file a guardianship petition?

- Anyone can file a guardianship petition, including the incapacitated individual, hospital staff or another person interested in the welfare of the incapacitated individual.[1]

TIP Having APS file a guardianship petition on behalf of a hospital or a hospitalized patient is not recommended.

How do I file a guardianship petition?

(All State of Michigan approved forms for use in guardianship cases can be found at: Courts.Michigan.gov/SCAO-forms/guardianship/)

- Guardianship petitions are filed with the probate court in the county where the individual lives **OR** in the county where they currently reside.[1]
  - For example, if an individual is hospitalized in Kent county but lives in Ottawa county, guardianship can be filed in either county.[8]
- The guidance below includes many of the forms commonly required to file a guardianship petition. However, given the variance between probate courts, please refer to the guidance provided by your county's probate court.

TIP The requirements for completing a guardianship petition are highly dependent on the county of residence. Please refer to the guidance provided by your local probate court for the most accurate information.[7]

- **PC 625** – *Petition for Appointment of Guardian of Incapacitated Individual.*[11]
  Instructions for completing the Guardianship Petition Form can be found by visiting: Courts.Michigan.gov/SCAO-forms/guardianship/
- **PC 571** – *Acceptance of Appointment.*[30]
  Completed and signed by proposed guardian.
- **MC 97** – *Protected Personal Identifying Information (PII).*[53]
  Used to provide protected information called for in the petition. When PII (such as birth date[51]) is required to complete the guardianship application, it should be listed on this form **instead** of the public document, as this form is protected from public inspection. Complete only the fields that are required by other public court documents. **This form should be used to provide PII for defendants, respondents, or decedents only.**
- **MC 97a** – *Addendum to Protected Personal Identifying Information.*[54]
  Similar intent to MC 97, however MC 97a should only be used to **provide PII for persons who are not defendants, respondents, or decedents (e.g. the plaintiff, petitioner, or other individual).**

▶ Listed below are other forms which may be recommended or required. Please consult with your local probate court for specific details about your case.[7]

- **MC 505** – *Contact Information.*[55]
- **PC 630** – *Report of Physician or Mental Health Professional.*[28]
- **PC 617** – *Declaration of Intent to Give Notice by Publication.*[56]
- **PC 626** – *Notice of Rights to Alleged Incapacitated Individual.*[2]

What information should be included in the guardianship petition?

▶ Explain in as much detail as possible why you believe the individual needs a guardian, including specific behaviors, information about their mental/physical condition, recent conduct and/or any relevant medical records.[27] Any medical information included as part of the petition is not publicly discoverable, so please be as thorough as possible.

- This could include a doctor's note stating the individual lacks capacity for medical decision-making.[9]

The more specific healthcare providers can be when documenting the need for a guardianship, the better.

▶ It is important that the guardianship petition demonstrates that the individual meets the definition of "legally incapacitated," which is:

- "A person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause, to the extent that the person lacks sufficient understanding or capacity to make or communicate informed decisions."[27] Refer to the section titled ***When is a guardian necessary?*** for additional details.

When filing a guardianship petition, the focus should be on the mental capacity of the adult to make informed decisions. It is not sufficient to file a guardianship petition strictly because the decisions the individual is making are not believed to be in their best interest.[27]

Be sure there is a guardian identified prior to completing the guardianship petition. The form cannot be submitted without it. Refer to the section titled ***How do I find a guardian?*** for additional details.

- The court will require a copy of the proposed guardian's driver's license when filing the petition to complete a criminal background check.[9]

2. PAY FILING FEE

A filing fee is required to file a guardianship petition. The amount is dependent on the county where the petition is filed. Please refer to the guidance provided by the local probate court for additional information.[7]

3. SUBMIT DOCUMENTS

Upon completing required documentation, submit to the probate court along with the filing fee.

- Please refer to the guidance provided in your county for how these documents should be submitted. They will likely either need to be mailed or dropped off to the probate court.

What happens after a guardianship petition is filed?

PRE-HEARING PROCEDURES

Each county probate court may have additional requirements for pre-hearing procedures. Please consult with your local probate court for more information.[7]

- Within 28 days of filing the petition, the probate court will set a hearing date, though there is no specific timeframe for when the hearing must be conducted.[16]
  - Refer to the section titled ***How long does it take to get guardianship?*** for additional details about trial timing.
- The individual who filed the petition must provide all 'interested persons' with a *Notice of Hearing (PC 562)17* along with a copy of the *Guardianship Petition (PC 625).*[11, 18]
  - 'Interested persons' include, but are not limited to: Children, a spouse, and/or beneficiaries.[19]
  - Interested parties may be notified via first-class mail, hand delivered copies, or if whereabouts are unknown, by publication in a newspaper in the county where the hearing will be held.[62]
- The individual who filed the petition must arrange for the incapacitated individual to receive the *Notice of Rights to Alleged Incapacitated Individual (PC 626),*[2] along with a copy of the *Guardianship Petition (PC 625).*[11, 20]
  - This notice lets the individual know that someone has filed a guardianship petition on their behalf and outlines their rights.
- If all interested persons are in agreement about the next steps for the incapacitated adult, each individual can submit a *Waiver/Consent (PC 561)* to the probate court. This document waives the right to a notice and consents to granting the guardianship petition as written, allowing the probate court to issue a decision through an expedited hearing.[21, 22]
- Unless the individual has hired a lawyer, the court will appoint a guardian ad litem in advance of the hearing, within 48 hours of receiving the guardianship petition:[8]
  - The guardian ad litem is court-appointed position that represents the incapacitated person before the court. Usually this individual is a licensed, practicing attorney.[23] When a guardian ad litem is appointed, the court will send a copy of the order to all Interested Persons, including the petitioner.
  - This individual has no decision-making authority, rather they serve as a resource for the incapacitated individual and their family to help explain the process, role of guardianship, types of guardianship available, etc.
  - The guardian ad litem will meet with the individual in question, advise them of their rights, identify whether the individual agrees with the petition and will make recommendations to the court about what is in the individual's best interest – including whether or not a guardian is needed.[23]
  - Following the visit with the incapacitated individual but prior to the hearing, the guardian ad litem will file a written report with the court to document their findings using *Acceptance of Appointment and Report of Guardian ad Litem* form (PC 643).[24, 25]
  - The guardian ad litem will charge the estate of the individual, an hourly rate for their services.[23] This fee is separate from the fee submitted to the probate court when filing a guardianship petition.

- After the petition is filed, the court **may** order the incapacitated individual to be examined by a court-appointed physician or a mental health professional.[26]
    - The healthcare professional will examine the individual and provide a written report to the court using *Report of Physician/Mental Health Professional* form (PC 630).[28]

HEARING PROCEDURES

- During the hearing, the court will determine if there is clear and convincing evidence that an individual is incapacitated and whether appointing a guardian is necessary to provide care and supervision for the individual.[5]
    - For the judge to find someone *incapacitated*, they must find that the individual does not have enough understanding or capacity to make or communicate informed decisions due to mental illness, mental deficiency, physical illness or disability, chronic drug use, chronic intoxication, or for some other reason.[19]
    - More details about when an individual is 'incapacitated' can be found in the above section titled ***When is a Guardian Necessary***.
- The court is also assessing whether there is another person who already has the authority to act or make decisions within the current circumstances.
- The judge will hear from the guardian ad litem during the hearing, who will share whether the incapacitated individual agrees to the guardianship petition.[9]
    - If the individual **agrees**, the judge will appoint a guardian, assuming sufficient evidence.
    - If the individual **disagrees**, the judge will schedule an evidentiary hearing to hear evidence from both sides before determining whether appointing a guardian is appropriate.

COURT DECISION & GUARDIAN APPOINTMENT

- If there is sufficient evidence for the court to appoint a guardian:
    - The judge will sign an *Order Regarding Appointment of a Guardian of Legally Incapacitated Individual (PC 631)* detailing court findings, reason for appointing a guardian and the name of the appointed guardian.[29]
    - The proposed guardian will sign an *Acceptance of Appointment (PC 571).*[30]
    - The judge will issue *Letters of Guardianship (PC 633),*[31] detailing the extent of the guardian's powers and responsibilities, officially authorizing the guardian to act.

How long does it take to get guardianship?

- Within 28 days of filing the petition, the probate court will set a hearing date, though there is no specific timeframe for when the hearing must be conducted.[16]
  - The length of time until a hearing is conducted will depend on the county of residence and may range from two to six weeks to three months.
- Temporary emergency guardianship hearings are typically scheduled much sooner than full guardianship hearings.
  - Within 28 days of appointing a temporary emergency guardian, a full guardianship hearing must be held.[13]

> TIP The 28-day requirement will not apply if the request for a temporary guardian is denied.

Is there a way to get an expedited guardianship hearing?

Yes, through an emergency petition. Refer to the section titled ***Temporary emergency guardianship*** for more information.

Can guardians be paid?

Yes.

- If the incapacitated individual is a Medicaid beneficiary, guardians can receive $83 per month.[32]
- Guardians are eligible to be paid by other sources, either in lieu of or in addition to the Medicaid payment, including from the incapacitated individual's assets. The amount depends on the time commitment, services provided and available funds – all of which will be paid from the incapacitated individual's assets.[1]

What to do if a nursing home, or other facility, is requiring appointment of a guardian before accepting an admission to their facility?

There may be instances where nursing homes, long-term acute care hospitals or sub-acute rehab providers are requesting appointment of a guardian before admitting a new resident to their facility. However, having a guardian is not a requirement for long-term care (LTC) admission in the state of Michigan, and should only be utilized when the individual meets criteria for guardianship as outlined above.

- The concerns may be due, in part, to an uncertainty about whether the resident can afford the services provided by the institution.
  - Requiring a guardian be in place as a guarantor of funds is in direct violation of federal law which states: "A nursing home must not require third party guarantee of payment to the facility as a condition of admission."[33, 34]

- The facility may however, request or require that a resident representative with legal access to a resident's income is available to pay for care provided, using resident's financial resources.[34]

- Provided below are some options for understanding the nursing homes' concern and inquiring about next steps for admission **without** a court-appointed guardian.

1. CONTACT THE NURSING HOME ADMINISTRATOR.

- Inquire about the reasons the admission was denied. It may have nothing to do with guardianship, so it will be imperative you clarify. If it **is** related to guardianship, please see notes below about additional questions to ask.
- Inquire if the facility will accept a healthcare POA or DPOA in lieu of a guardian for placement decisions.
  - You may also ask if a conservator is sufficient, though if the individual does not already have a conservator in place, the process for appointing a conservator will be just as lengthy as the process required to appoint a guardian.
- Federal statue indicates that an admission policy must not request or require third party guarantee of payment as a condition of admission.[59]

Federal law requires Medicaid to retroactively reimburse facilities for 3 months of service.[60] This may be an important point to reiterate when speaking with the nursing home administrator.

The probate courts want to preserve the rights of the incapacitated individual to the greatest extent possible and prefer to avoid appointing a guardian if a DPOA or healthcare POA is able to make placement decisions for the incapacitated individual.

2. TALK WITH MICHIGAN DEPARTMENT OF LICENSING & REGULATORY AFFAIRS.

- LTC facilities cannot refuse admission of a resident for the sole reason that they do not have a guardian. This is not part of a standard admission requirement.
- Contact information and phone numbers for Bureau of Community and Health Systems can be found online.[35]

3. CONTACT THE ATTORNEY GENERAL'S OFFICE – DIVISION OF HEALTH CARE FRAUD.

- Healthcare facilities licensed in the state of Michigan are required to have a policy describing patient rights, which must state that, "a patient or resident shall not be denied appropriate care on the basis of race, religion, national origin, sex, age, handicap, marital status, sexual preference, **or source of payment**."[58]
- Contact information for the Department of Attorney General Health Care Fraud Division[36] can be found online. The Department of the Attorney General can also be reached by phone at 517-335-7622.

4. CONTACT THE MICHIGAN LONG-TERM CARE OMBUDSMAN PROGRAM.*

**This only applies to individuals who are current LTC residents. Please only contact the Ombudsman if the patient was admitted from a LTC facility. They are unable to act if the patient was admitted from any other care setting.*

- The Michigan Long Term Care Ombudsman Program (MLTCOP) works with residents of long-term care facilities and their families, to resolve problems and promote high-quality care.[37]
- Ombudsman services are free and confidential. Find your local long-term care ombudsman on the MLTCOP website.[38] Please call 1-866-485-9393 to reach a local ombudsman.
- More information about the LTC Ombudsman program can be found in the section titled ***What is the role of a Long-Term Care Ombudsman?***

What should I do if a patient already has an appointed guardian but they are unresponsive?

- Facilities should document all attempts to contact the guardian, including date, time, and method of outreach (phone, email, etc.).
- Please call the probate court where the guardianship order was issued and let them know about the challenges you are experiencing.
- If a guardian continues to be unresponsive, the probate courts can appoint special fiduciaries on an emergency basis and/or a guardian ad litem to investigate.[46]
- In the event you are able to resolve the situation without engaging the probate court, it is still beneficial to contact them to ensure your experience can be documented. This information will help the probate courts document patterns of behavior for appointed guardians.

> TIP The probate courts want to be sure they are appointing guardians who meet the minimum responsibilities, so if this is not happening, it is important they are aware.

- If challenges persist, the legally incapacitated individual (if appropriate) or any interested person may submit a petition to modify the guardianship arrangement and appoint a new guardian.[47]
    - To do so, requires the completion of the *Petition to Terminate/Modify Guardianship of Legally Incapacitated Individual or Minor (PC 675)* form, which should be and submitted to the local probate court, along with any associated filing fees.[27]

Adult Protective Services and Guardianship

WHAT IS THE RELATIONSHIP BETWEEN ADULT PROTECTIVE SERVICES (APS) & GUARDIANSHIP?

- APS handles guardianship as part of their role, however, the process for determining/approving guardianship falls under the statue of the probate court.
    - APS is only involved in obtaining guardianship if the incapacitated adult has an active APS investigation. In these instances, APS will assist with filing guardianship petitions, ensuring forms are completed correctly and that individuals meet appropriate criteria.
- An APS referral is not required in all situations where a guardianship petition is warranted, but can offer information and education on the process to anyone in the community.

> TIP Having APS file a guardianship petition on behalf of a hospital or a hospitalized patient is not recommended.

WHAT IS THE APS PROCESS?

- After an APS referral is made, they will determine whether the individual needs and agrees to services.[49]
    - The Adult Services Worker (ASW) assigned to the case has a maximum of 72 hours to make face-to-face contact with the client.
        - **In a life/death situation, they must begin investigating as soon as possible.**
    - An emergency court action may be initiated, if necessary.
    - An initial assessment of the individual will be completed, including identification of other individuals who may be relevant to the case such as medical providers, probate court judges, law enforcement and/or financial institutions.
    - ASW will develop a plan of care to address the individual's needs.
    - ASW will determine whether referral allegations are substantiated or not based on information they've collected.

- After the case is investigated and APS services are offered, the case will be closed. There is no penalty to the individual who made the request, the individual in question, or the facility in which the individual is currently residing (if any) when an APS referral is made.

WHEN SHOULD I INVOLVE APS?

- The primary role of APS is to investigate abuse, neglect and/or exploitation regarding vulnerable adults.

> TIP **Do not wait on someone else to report!** If you suspect abuse, neglect, or exploitation, please make an APS referral by calling **855-444-3911** at any time, day or night.[52]

- If there is any suspicion that an APS referral needs to be made, make it as soon as possible. This will ensure more timely coordination of care and prevent delays at discharge.

> TIP **Please do not wait until the time of discharge to involve APS!**
>
> - By initiating an APS investigation sooner, there may be an opportunity to hold required court proceedings within normal timeframes, rather than securing an emergency hearing.
> - APS has 24 hours to begin an investigation and 72 hours to make a face-to-face contact with the vulnerable adult. By waiting until the day of discharge to make a referral, you face the possibility that APS may not be available to assist for up to 72 hours.

AM I REQUIRED TO INVOLVE APS IF I WANT TO FILE A GUARDIANSHIP PETITION?

No. Anyone can file a guardianship petition at any time, regardless of whether or not APS is currently or has previously been involved.

What is the role of a Long-Term Care Ombudsman?

A Long Term Care (LTC) Ombudsman will address quality of care and quality of life issues for nursing home residents.[49] Ombudsman work with residents of LTC facilities to resolve complaints or allegations of abuse, neglect and exploitation, but are not automatically involved in petitions for guardianship or involved with LTC residents who have a guardian.

An ombudsman ***may*** be involved in guardianship cases if there is reasonable cause that the guardian is not acting in the best interest of the resident and/or to investigate complaints that relate to action, inaction or decisions that may adversely affect the health, safety, welfare or rights of the resident (including the rights of the resident with respect to guardianship appointments).[50]

Glossary of Terms

Adult Protective Service (APS) – investigates cases of elder abuse, neglect and exploitation by coordinating with mental health, public health, law enforcement, the probate court, the aging network, community group and the general public.

Conservator – is appointed by a judge to manage the finances, assets, and property of an incapacitated individual including asset management, bill payment or general financial decision making after a person is consider incapacitated.

Durable Powers of Attorney (DPOA) – the assignment of a DPOA is made by appointing, in writing, another individual that will assume responsibility over another individual's finances if they are no longer able to manage them.

Full Guardianship – should be appointed when an individual is totally incapacitated and is unable to care for themselves, including making decisions about their daily lives.

Guardian – A guardian takes care of an incapacitated adult's personal needs, including decision-making related to medical and placement needs when an individual is unable to do so.

Healthcare Power of Attorney (HPOA) – is a special type of Power of Attorney by which an individual designates, in writing, another individual who can make decisions related to care, custody, medical or mental health treatments when the individual is unable to participate in these decisions.

Legally Incapacitated – refers to a person who cannot take care of his or her own physical safety and health.

Limited Guardianship – is appointed when an individual lacks the capacity to do some of, but not all, the necessary tasks to take care of themselves. The incapacitated individual maintains all their rights, except for the those that are explicitly outlined by the courts.

Long Term Care (LTC) – involves a variety of services designed to meet a person's health or personal care needs during a short or long period of them. These services help people live as independently and safely as possible when they can no longer perform everyday activities on their own.

Michigan Long-Term Care Ombudsman Program (MLTCOP) – works with residents of long-term care facilities and families, to resolve problems and promote high-quality care.

Temporary Emergency Guardianship – may be granted during an emergency situation when an individual cannot wait for a full guardianship hearing.

Endnotes

1 State Bar of Michigan – Probate Information: Guardianships - Acting for Adults Who Become Disabled, How a Guardian is Appointed

2 PC 626, Notice of Rights to Alleged Incapacitated Individual

3 Michigan Legislature – Section 700.5314: Powers and duties of guardian

4 Kalamazoo County – Guardianship of an Individual with Legal Incapacity

5 Michigan Legislature – Section 700.5306: Court appointment of guardian of incapacitated person; findings; appointment of limited guardian; effect of patient advocate designation; supervised access

6 Michigan Legislature – Section 700.5313: Guardian; qualifications

7 Michigan Department of Attorney General - Michigan Probate Courts by County

8 Michigan Legislature – Section 700.5303: Court appointment of guardian of incapacitated person; petition; alternatives to appointment of full guardian; hearing

9 Ann Arbor Probate – A Simple Guide To Filing For An Adult Guardianship In Michigan

10 Michigan Legislature – Section 700.5312: Court exercise of power of guardian; temporary guardian

11 PC 625, Petition For Appointment of Guardian of Incapacitated Individual

12 Kent County Probate Court – Temporary Guardian of an Adult

13 Michigan Court Rules Chapter 5 – Probate Court

14 PC 632, Order Regarding Appointment of Temporary Guardian of Incapacitated Individual

15 PC 666, Options You Should Know Before Filing a Petition for a Full Adult Guardianship

16 Kent County Probate Court – Types of Guardianship and Conservatorship

17 PC 562, Notice of Hearing

18 Kent County Probate Court – Pre-Hearing Procedure

19 Michigan Legislature – Section 700.1105 Definitions; I to L

20 State Bar of Michigan – Probate Information: Conservatorship - Acting for Adults Who Become Disabled

21 PC 561, Waiver/Consent

22 Michigan Legislature – Section 700.1402: Notice; waiver; order

23 Oakland County Probate Court – Information Sheet for Petitions for Appointment of Guardians/Conservators of Adults (PEMH 1033)

24 PC 643, Acceptance of Appointment and Report of Guardian ad Litem

25 Michigan Legislature – Section 700.1403: Formal proceeding; pleadings; parties bound by others; notice

26 Michigan Legislature – Section 700.5304: Evaluation and report; hearing

27 Kent County Probate Court – Petitioning for the Guardianship of an Adult

28 PC 630, Report of Physician or Mental Health Professional

29 PC 631, Order Regarding Appointment of Guardian of Incapacitated Individual

30 PC 571, Acceptance of Appointment

31 PC 633, Letters of Guardianship

32 State of Michigan Bridges Eligibility Manual (BEM 546) – Post-eligibility Patient-pay amounts

33 Policy Statement on Michigan State Long Term Care Ombudsman Program – Health Care Decision-Making For a Resident In a Nursing Home

34 42 USC 1396r: Requirements for nursing facilities

35 Licensing and Regulatory Affairs: Bureau of Community and Health Systems, Long Term Care.

36 Michigan Department of Attorney General, Health Care Fraud Division – Patient Rights and Responsibilities in Michigan Licensed Facilities, Health Care Fraud Division

37 The Senior Alliance – Michigan Long Term Care Ombudsman Program (MLTCOP)

38 Michigan Long Term Care Ombudsman Program – Contact Us

39 Kent County Probate Court – Alternatives to Guardianship and Conservatorship

40 Michigan Legislature – Section 700.5501: Durable power of attorney; definition; attorney-in-fact

41 Patrick & Associates – Power of Attorney, Guardianship, and Conservatorship

42 Michigan Legislature – Section 700.5425: Distributive duties and powers of conservator

43 Oakland County – Guardianships & Conservatorships

44 Disability Rights Michigan – Advance Directives & Guardianship Rights

45 American Bar Association – Decisions by Surrogates: An Overview of Surrogate Consent Laws in the United States

46 Michigan Legislature – Section 700.2901: Short title of part; definitions

47 State Bar of Michigan – Probate Information: Guardianship & Conservatorship can be Modified or Terminated

48 PC 675, Petition to Terminate/Modify Guardianship

49 MI-MVP A Model Protocol for Joint Investigations of Vulnerable Adult Abuse, Neglect and Ex-ploitation

50 42 USC 3058g: State Long-Term Care Ombudsman program

51 Michigan Legislature – Section 700.5506: Designation of patient advocate; "community men-tal health services program or hospital" defined

52 Adult Protective Services

53 MC 97, Protected Personal Identifying Information

54 MC 97a, Addendum to Protected Personal Identifying Information

55 MC 505, Contact Information

56 PC 617 Declaration of Intent to Give Notice by Publication

57 Michigan Legislature - Section 700.5512: Restrictions

58 Michigan Legislature – Section 333.20201: Policy describing rights and responsibilities of patients or residents.

59 Code of Federal Regulations - 42 CFR 483.15: Admission, transfer, and discharge rights.

60 42 CFR 435.915: Effective date

61 FAQ Personal Identifying Information in Court Filings

62 Michigan Legislature - Section 700.1401: Notice; method and time of giving

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