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|  | Guardianship and Conservatorship for Adults | | | |
| | Chapter: | Board Service and Program Administration | Policy # | 2-2-11 |
| | Section: | Assessment, Service Planning and Documentation | Revision # | 2 |

- I. **PURPOSE:** To define WMCMH's responsibility in exploring all alternatives to guardianship or conservatorship in order to preserve the legal rights and standing of individuals served. To provide guidelines to WMCMH and contracted provider staff regarding guardianship as an option for substituted decision making.
- II. **APPLICATION:** All programs and services operated by or contracted with the West Michigan Community Mental Health
- III. **REQUIRED BY:** Not applicable.
- IV. **DEFINITIONS:**


Advanced Directives: An advanced directive allows the person to have a pre-assigned advocate designated to exercise power regarding his/her mental health treatment decisions and allow the individual to include in their support plan regarding their desires on mental health treatment. This includes executing an application for formal voluntary hospitalization. (This is according to Senate Bill 1464-1472, which amends the Michigan Mental Health Code 2004)

Durable Power of Attorney for Health Care: Durable Power of Attorney for Health Care is a legal device used for estate planning purposes giving a trusted Agent the authority to act on medical affairs when a person is not able to due to incompetency or incapacity. With Durable Power of Attorney for Health Care, the Principal appoints the Agent of his or her own choosing instead of a judge deciding on a court-appointed conservator to make medical decisions for you.

Guardianship/Conservator: In Michigan, guardianship/conservatorship grants the legal authority to care for another person when it has been determined they are unable to do this for themselves. A guardian takes care of an incapacitated adult's personal needs. A conservator takes care of an incapacitated adult's property. Generally speaking, an adult guardian's responsibility is to look out for the overall well-being and care of an incapacitated individual — that is, someone who cannot communicate or make informed general care and control decisions for themselves. In this document the word "guardian" is used throughout but could apply to a conservator as well, as applicable.

Supported Decision-Making: Allows people with Intellectual and Developmental Disabilities (I/DD) to receive the support they need and want to understand the situations and choices they face, while keeping their rights. Supported Decision-Making mirrors how all adults make decisions. Practicing self-determination means making your own choices, learning to solve problems, and experiencing the consequences of making choices.

Supports Coordinator/Case Manager: A professional staff member of West Michigan Community Mental Health who has the primary responsibility, together with the consumer for access to needed health and dental services, financial assistance, housing, employment, education, social services, mental health services, habilitation, employment, preferences and other services and natural supports developed through the person-centered planning process. Care is provided in a responsive, coordinated, effective and efficient manner focusing on process and outcomes. Care Management is provided to

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consumers who have multiple service needs, have a high level of vulnerability, and/or are unable to independently access and sustain involvement with needed services. The care manager is responsible for ensuring the implementation of the individual plan of service. The care manager is responsible for what is in the consumer's clinical record for those consumers assigned.


Ward: An individual for whom a guardian is appointed is known as a *ward*.

V. **POLICY:** It is the policy of West Michigan Community Mental Health to explore all alternatives to guardianship in order to preserve the legal rights and standing of individuals served.

VI. **PROCEDURES:**

1. CONSENT FOR TREATMENT AND DECISION MAKING

- a. Adults are presumed to be legally competent to make decisions regarding treatment and supportive services unless determined incompetent through a court appointed guardian, this includes individuals consenting to treatment and signing of documents (such as treatment plans, Ability to Pay, etc.).
- b. The court appointed guardian shall consent to treatment and sign documents on behalf and in the best interest of their ward, within the scope of the guardianship.
- c. Individuals with a fully executed Durable Power of Attorney for Health Care in which the individual has been determined unable to participate in treatment decisions (as determined and documented by two physicians or a physician and a licensed psychologist) will not consent to treatment or be considered legal/official signatory on documents, based on scope of executed Durable Power of Attorney for Health Care.
- d. When members of treatment team question whether the individual is able to understand the implications of consent, the Supports Coordinator/Case Manager shall assess the individual's level of comprehension and the individual's need for assistance in decision making and consent. This process will include the follow steps:
 - i. Conducting interviews for fact finding and problem solving which will include information on alternatives to guardianship, this should include conversations directly with the individual or parent regarding Supported Decision Making and other alternatives to guardianship when appropriate.
 - ii. Documenting in the clinical record all alternatives that are explored.
 - iii. Facilitating evaluations and assessments to determine an individual's need for durable power of attorney, advanced directives or, as a last resort, guardianship.


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- iv. Making recommendations for legal arrangements to support the individual.
- e. When there is an identified need for assistance, all appropriate alternatives less restrictive than legal guardianship must be explored and considered, Compliance with applicable laws is required when using the examples below:
 - i. Education provided to individuals as alternatives (i.e., Community Advocates, Recovery Institute).
 - ii. Inclusion of family, advocates, and allies to help explain, ask questions, and explore options.
 - iii. Advanced Directives for Health Care Decisions.
 - iv. Medical Power of Attorney (i.e., MDHHS Memorandum on Programmatic Guidance on Powers of Attorney).
 - v. Representative Payee/Conservator.
- 2. The Case Manager/Supports Coordinator shall assist the individual to make arrangements for the appropriate alternative to be implemented.

WMCMH staff/agents shall not assist individuals applying for guardianship when a less restrictive alternative is available and appropriate (MCL 330.1602).

3. RECOMMENDATION FOR GUARDIANSHIP

- a. There may be instances when all appropriate alternatives have been exhausted and a guardianship is the only option available to meet the legal needs of the individual. In these cases, the Case Manager/Supports Coordinator may assist the individual in pursuing a guardianship.
 - i. The Case Manager/Supports Coordinator shall consult with designated WMCMH staff as needed. WMCMH staff may confer with legal counsel as needed (consultation with legal counsel does not imply legal representation).
 - ii. The Case Manager/Supports Coordinator shall forward the application for guardianship to their direct supervisor for review prior to submitting to the court. WMCMH staff shall review to ensure compliance with court requirements.
 - iii. The Case Manager/Supports Coordinator shall provide documentation that all other appropriate alternatives have been pursued and exhausted as part of the application review process.
 - iv. To substantiate an individual's level of competency, a separate assessment process which supports the individual as the primary beneficiary and holds his or her interests above all others will be conducted by the Case Manager/Supports Coordinator.
 - v. Every effort shall be made to limit guardianship recommendations to partial, indicating the specific scope of guardianship. Recommendations for plenary guardianship shall be subjected to additional review by the WMCMH Chief Clinical Officer/Designee due

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- vi. In the event no other interested person is available, Case Manager/Supports Coordinator may initiate guardianship proceedings. The Case Manager/Supports Coordinator may not, however, be considered for the position of guardian.
- vii. WMCMH designees shall be available for consultation to Case Managers/Supports Coordinators regarding alternatives to guardianship and the guardianship application process.
- viii. Copies of court ordered guardianship papers shall be placed in the WMCMH Electronic Health Record and the applicable agency records.

b. Emergency Guardianship

In the absence of Advanced Directives for Health Care or Medical Power of Attorney, an individual otherwise presumed competent may need to have an emergency guardianship. In these instances, the individual’s mental health worker or other interested person(s) will petition the court to evaluate the individual’s needs, hear expert testimony and evaluate evidence presented to determine the individual’s need for guardianship services. The worker, or other interested person(s) will recommend a suitable, willing person (if one exists) or public agency for the court’s consideration as a guardian. These steps are taken when the following circumstances exist:

- ii. The individual’s ability to give informed consent is questioned
- iii. The individual’s life is threatened by medical circumstances
- iv. The individual is believed to be at imminent risk for personal harm or exploitation

4. GUARDIAN ACTING IN BEST INTEREST OF WARD


If there are indications that a guardian is not acting in best interest of the ward (lack of response to treatment issues, exploitation, appearance of conflict of interest, excessive charges, etc.) the Supports Coordinator/Case manager shall review situation with supervisor and develop a plan to address. This could include discussion with guardian, additional monitoring for freedom from exploitation or petitioning court for replacement of guardian.

VII. SUPPORTING DOCUMENTS:

Department of Mental Health Administrative Rules R330.6019 and R330.7009

VIII. POLICY/PROCEDURE REVIEW:

| REV# | APPROVED BY | Policy/Procedure | DATE |
|--|-------------|------------------|-----------|
| 1 | WMCMH Board | Policy Approved | 2/15/2022 |
| 2 | COC | Procedure | 02/2023 |
| Board Approval Date: 02/15/2022 | | | |

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IX. **CHIEF EXECUTIVE OFFICER ENDORSEMENT:**

I have reviewed and approved of policy #2-2-11 Revision # 2.

CEO: Lisa A. Williams Approval Signature: _____