

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: 7/27/09
Page: 1 of 4

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 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. 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.
6. 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

