

DEPARTMENT OF COMMUNITY HEALTH

MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES

(By authority conferred on the department of mental health by sections 1 to 4 of Act No. 80 of the Public Acts of 1905, as amended, section 33 of Act No. 306 of the Public Acts of 1969, as amended, and sections 114, 130, 136, 157, 206, 244, 498n, 498r, 842, 844, 908, and 1002a of Act No. 258 of the Public Acts of 1974, as amended, being sections 19.141 to 19.144, 24.233, 330.1114, 330.1130, 330.1136, 330.1206, 330.1244, 330.1498n, 330.1498r, 330.1842, 330.1844, 330.1908, and 330.2002a of the Michigan Compiled Laws)

PART 6. GUARDIANSHIP FOR RECIPIENTS OF MENTAL HEALTH SERVICES

R 330.6006 Applicability.

Rule 6006. (1) These rules apply to persons designated mentally retarded as that term is defined in section 602 of the act.

(2) A determination of need for guardianship proceedings may also be made under these rules for persons who are designated mentally ill. Upon a determination that a mentally ill recipient cannot give informed consent, a hospital or program director shall not cause a proceeding for guardianship to be commenced in the probate court, but shall notify the persons indicated by these rules. When a person is not available to be notified or the notified persons refuse to take action and action is urgently needed, a hospital or program director may elect to commence appropriate probate court guardianship proceedings authorized by law if a suitable candidate to serve as guardian is available or the probate court has indicated a willingness to appoint a public guardian at county expense, request a probate court to consent to the performance of surgery or electroconvulsive therapy or other procedure intended to produce convulsion or coma in lieu of the person eligible to give consent, or resort to other emergency procedures listed in chapter 3 of Act No. 288 of the Public Acts of 1939, as amended, being S703.1 et seq. of the Michigan Compiled Laws.

History: 1979 AC.

R 330.6008 Admission of residents to a facility by guardians.

Rule 6008. (1) A facility shall not admit a person of the age of 18 or over on a temporary or administrative admission basis on the application of a plenary or partial guardian unless a court order specifically empowers the guardian to place the person in a facility of the type to which application has been made.

(2) A facility shall not admit a person under the age of 18 on a temporary or administrative admission basis on the application of a plenary or partial guardian, appointed under the act unless a court order specifically empowers the guardian to place the person in a facility of the type to which application has been made. A facility may admit a person under the age of 18 on the application of a guardian appointed pursuant to other law without the required court order.

History: 1979 AC.

R 330.6011 Determination of need for guardianship proceedings.

Rule 6011. (1) The facility or program director shall presume a person of the age of 18 or over legally competent to make an application or give a consent, or to refuse to do so, except that:

(a) This presumption shall be conclusively rebutted when a plenary guardian of the person, or of the estate and of the person, or a partial guardian has been appointed for a person and a duration of the term of guardianship indicated in the court order has not expired.

(b) When a partial guardian has been appointed, a person shall be presumed legally competent except for:

- (i) Areas designated as legal disabilities in the court order appointing a partial guardian.
- (ii) Powers or duties granted to the guardian as specified in the court order appointing a partial guardian.

(2) The manner of determining need for guardianship proceedings required by these rules shall be part of the procedure followed by facilities in conducting evaluations of minor residents 6 months prior to an eighteenth birthday to determine whether a resident is competent to execute an application for administrative admission or otherwise requires the protective services of a guardian. An evaluation of need for other protective services of a guardian shall be made even if a decision has been made to discharge a resident by his eighteenth birthday.

(3) A staff member responsible for taking action concerning a person or for arranging for a person of the age of 18 or over to make application or give consent may decline to do so on the ground that the person is not capable of giving or refusing to give an informed consent in 1 or more of the following areas:

(a) Admission to a facility or participation in a program.

(b) Nonemergency surgery or other medical procedures not related to care and treatment for a person's mental condition.

(c) Nonemergency use of electro-convulsive therapy or other procedure intended to produce convulsion or coma for a resident or psychosurgery or other treatment of an experimental or extra hazardous nature for a voluntary resident.

(d) Consent to chemotherapy prior to final adjudication of a petition for involuntary admission.

(e) Financial matters, including payment for services and securing insurance and governmental benefits.

(f) Fingerprinting or photographing of a recipient.

(g) Disclosure of confidential information which requires consent.

(h) Resident labor or other employment which requires consent.

(i) Abortion procedures, surgical sterilization, and chemical or mechanical contraceptive measures.

(j) Other developments relating to a person's residence in a facility or participation in a mental health services program, other than care and treatment, training programs or services ordered by a probate court.

(4) A staff member declining to take action or make arrangements shall give to the facility or program director, in writing, reasons for a conclusion that a person is not capable of giving or refusing to give an informed consent.

History: 1979 AC.

R 330.6013 Informed consent board.

Rule 6013. (1) Upon review, a facility or program director shall determine whether a staff member's written conclusion that a person is not capable of giving or refusing to give an informed consent is of substantial weight. A facility or program director shall, when possible, authorize staff to act upon an application, consent, or refusal of a person of the age of 18 or over who is presumed to be legally competent. If a facility or program director determines that a staff member's written conclusion that a person is not capable of giving or refusing to give an informed consent is of substantial weight, he or she shall convene an informed consent board.

(2) An informed consent board may either be a standing interdisciplinary body drawn from an existing interdisciplinary review board within a facility or program or may be appointed on a case-by-case basis. An informed consent board shall consist of the following:

(a) Two mental health professionals of different disciplines with appropriate clinical experience or training.

(b) A third person who is not employed by the facility or program but who is selected by the facility or program director from qualified volunteers with an interest in mental health or mental retardation advocacy and services.

(3) One board member shall have had prior clinical contact with the person whose ability to give informed consent is at issue, but a board member shall not have been involved in either the action or application for which consent is needed or the decision to evaluate the need for guardianship proceedings.

(4) A board shall evaluate the capacity of a person to give or refuse to give the required informed consent by interviewing the person and other appropriate persons and by evaluating available clinical records and test results. A board shall submit a written report which states the board's findings of fact, the person's desires in the matter, when possible, a conclusion whether the consent or refusal is or will be informed, and the board's recommendation.

(5) Informed consent assumes all of the following:

(a) That a person has the capacity to make a decision and to understand rationally the nature of the procedure, its risks or other consequences, and other relevant information despite deprivations stemming from confinement and despite the negative effects of institutionalization.

(b) That a person has been made aware of the procedure, risks, or other direct ramifications, including benefits, reasonably to be expected and of an appropriate alternative which is advantageous to the person. There shall be an offer to answer further inquiries of the person.

(c) That a decision is or will be an exercise of free power of choice without intervention of any element of force, fraud, deceit, duress, overreaching, or other ulterior form of constraint or coercion, including promises or assurances of freedom or privileges. The person shall be instructed that he or she is free to withdraw consent or to discontinue an ongoing activity or participation at any time without prejudice.

(6) A board shall recommend those mental, physical, social, or educational evaluations which it deems necessary to further ascertain the capacity of a person to give informed consent or the need of a minor who is approaching the age of 18 for protective services of a guardian, to determine if guardianship will promote and protect the well-being of the person, or to arrive at a suitable guardianship design.

(7) If a majority of an informed consent board concludes that a person does not have the capacity to make a decision or to rationally understand a situation, as required for an informed consent, and if the board concludes that guardianship can promote and protect the well-being of the person and recommends a guardianship request designed to encourage the development of maximum self-reliance and independence in the individual, then a director of the facility or program shall cause a proceeding for guardianship to be commenced in the probate court. Steps taken to cause a proceeding shall be in accordance with R 330.7003 and this rule on a facility's or program's role in guardianship proceedings.

(8) If a majority of an informed consent board concludes that informed consent is absent either because a person has not been made sufficiently aware of the procedures, risks, other ramifications, benefits, or alternatives or because a decision is not voluntary, as required for an informed consent, the director shall cause the individual to be provided necessary information or, when possible, an opportunity for voluntary choice.

(9) If a majority of an informed consent board concludes that a person can give or has given an informed consent or has the capacity to give an informed consent and has refused to consent, the facility or the program director shall authorize the staff to act accordingly.

(10) A parent or a responsible relative, a previously appointed current partial guardian, or other interested person or entity shall be notified of a determination that a person cannot give an informed consent. More than 1 person or entity may be notified.

(11) A copy of an informed consent board's report shall be placed in the person's case record.

History: 1979 AC; 1981 AACS.

R 330.6015 Emergency guardianship.

Rule 6015. (1) Whenever the life of a person presumed legally competent is threatened, when there is doubt whether a person is capable of giving informed consent, and when it is deemed necessary to undertake measures other than surgery or electro-convulsive therapy or other procedures intended to produce convulsion or coma, a facility or program director, without convening an informed consent board, may petition the probate court of the county where the person is located to exercise the powers of a guardian or to summarily appoint a temporary guardian. The medical necessity for the procedure shall be documented and entered into the record of the person and provided to the probate court.

(2) This provision for emergency guardianship shall not preclude medical staff from taking life-saving or physical stabilization measures when the life of a person is threatened and there is not time to obtain consent. These measures may be performed without consent after the medical necessity has been documented and the documentation has been entered into the record of the recipient. Consent for necessary continued administration of the emergency procedures shall be sought as soon as possible.

(3) A facility or program director may petition a probate court to exercise powers of a guardian or to summarily appoint a temporary guardian whenever a decision should be made by a person presumed legally competent whose life is not threatened but whose capacity to give an informed consent is in doubt, and a time limit for taking action or otherwise making a decision does not allow sufficient time for an informed consent board to be convened and make a determination. A board shall subsequently complete an inquiry and if a majority concludes the person is capable of giving or refusing to give an informed consent, a probate court which has assumed or authorized emergency or temporary guardianship powers shall be informed by its next working day and asked to terminate the guardianship.

(4) If an emergency or temporary guardianship is terminated as a result of an informed consent board's inquiry, a facility or program director shall cause, whenever possible, steps taken under the guardianship to be revoked or adjusted in accordance with the person's expressed desires.

History: 1979 AC.

R 330.6019 Facility or program rule in guardianship proceedings.

Rule 6019. (1) When guardianship is deemed necessary, a facility or program director shall endeavor to cause the petitioner to be an appropriate family member, friend, or public or private agency or association, other than an agency or association directly providing services to the person. The person himself may also be the petitioner.

(2) When the facility or program director or an authorized staff member petitions for appointment of a guardian, the petition shall not request, and a report provided by a department facility or a county program shall not recommend a greater scope or duration of guardianship powers and duties than is absolutely necessary to meet the needs presented by the person's actual mental and adaptive limitations and for which an informed consent board evaluated the ability of the person to consent or for which a minor approaching the age of 18 has been evaluated by an informed consent board as needing protective services of a guardian.

(3) A guardianship request shall be designed to encourage development of maximum self-reliance and independence in the person.

(4) If a petition previously filed on behalf of a facility or program resulted in appointment of a plenary guardian of the estate or a partial guardian or a refusal by a court to appoint any guardian, a facility or program director shall not authorize a subsequent petition unless there has been a significant deterioration in the person's condition or other compelling change in circumstances. This requirement shall not prevent action for emergency guardianship.

(5) Only when it is necessary for a court to summarily appoint a temporary guardian and then only when another person, agency, or association is not available to serve as guardian, shall a facility or program providing services to a person offer to serve as guardian.

(6) When a facility or program petitions for appointment of a guardian, a facility or program director shall cause, wherever possible, that an appropriate family member, friend, or public or private agency or association be considered by the probate court for appointment as guardian.

(7) Only on the request of a probate court and after all other possibilities have been exhausted may a department facility agree, on behalf of the department, to serve as a plenary or partial guardian.

(8) The department shall decline to serve as guardian for a person not receiving services from a department facility.

(9) A county community mental health program may accept an appointment as guardian for a person receiving services in a department facility, pursuant to these rules.

(10) Staff members of the department and of a community mental health program shall not personally act as guardians.

(11) Each facility director and community mental health director shall establish relationships with local associations for retarded citizens and other appropriate public or private agencies or associations which are capable of conducting an active guardianship program for a mentally retarded person to assist in obtaining individual or group guardians in cases where a family member or friends are not available.

(12) When a department facility or county community program staff member petitions for appointment of a guardian, on behalf of the facility or program, a facility shall provide, and a program shall provide or contract for, a report required by law. This report shall contain all of the following:

(a) Evaluations of the person's mental, physical, social, and educational condition made not more than the 30 days prior to filing a petition.

(b) A recommendation proposing the type and scope of guardianship services needed.

(c) A judgment as to the most appropriate living arrangement.

(d) Signatures of all persons, 1 of whom shall be a physician or a psychologist, who performed evaluations upon which the report is based. Any number of evaluations by persons not on the staff of the facility or program may be utilized.

(13) If suitable, a report of an informed consent board may be used as part of a required report.

(14) When facility or program staff petition for appointment of a guardian, a petition shall be filed in the probate court for the county of residence or county in which a mentally retarded person was found as determined by any of the following factors:

(a) The county from which a person was admitted on the basis of a judicial admission or ordered to undergo a program of alternative care and treatment.

(b) The county from which a person was referred to a facility or program by a county community mental health program or other public or private agency.

(c) The county in which a person resides, if a parent has agreed to an appointment as guardian.

(d) The county in which a person owns real estate suitable for residential use.

(e) The county with which a person has substantial service contacts as evidenced by such factors as recent or current enrollment in a public education system, recent or current employment, current voter or automobile registration, valid driver's license, bank accounts, or ownership of substantial tangible personal property.

(f) A person's present residence if he resides outside a facility.

(15) If the county of residence or the county in which a person was found cannot be determined, a petition may be filed in the probate court for the county in which the facility is located. If both the county of residence or in which the person was found are outside the facility's or program's service area, a petition may be filed in the probate court for the county in which the facility or program is located with the permission of the probate court.

(16) Whenever a facility or program staff petitions for appointment of a guardian and there has previously been a guardian appointed for a person, the petition shall, where possible, be filed in the same probate court which previously appointed a guardian for the person, and in all cases the court shall be alerted by the petitioner to previous current or expired guardianship of which the petitioner has notice.

(17) Whenever the department is appointed guardian, a facility shall request that the court order that the report to the court be at intervals which coincide with periodic reviews scheduled for the resident.

(18) The guardian's report to a court shall contain statements indicating all of the following:

(a) The person's current mental, physical, social, and educational condition.

(b) The person's present living arrangement.

(c) The need for continued guardianship services.

(d) Other information requested by the court or necessary in the opinion of a guardian.

History: 1979 AC.

R 330.6022 Guardianship for minors.

Rule 6022. (1) When the parent or other guardian of a mentally retarded minor in a facility or county program cannot be found after diligent effort or cannot give informed consent on behalf of a minor, facility or program staff may cause or initiate guardianship proceedings under chapter 6 of the act in a manner consistent with provisions of these rules. This provision shall not exclude neglect proceedings in a juvenile court.

(2) In areas where minors are authorized by law to give consent, and a parent does not give consent, or a minor desires to not involve parents, the capacity of a minor to give informed consent is in doubt, the measures authorized by these rules may be applied to arrange for a guardian to give consent on behalf of a minor.

History: 1979 AC.

R 330.6025 Testimony in guardianship proceedings.

Rule 6025. A facility or program director shall permit not less than 1 staff member who performed an evaluation in connection with a required report adequate time to testify at a probate court hearing on a guardianship petition.

History: 1979 AC.

R 330.6027 Termination or modification of guardianship.

Rule 6027. (1) A facility or program director shall assist residents in requesting a probate court to dismiss a guardian and name a successor guardian, or to dissolve a guardianship order.

(2) If a facility or program director determines that a guardian of a resident should be replaced or that a guardianship should be dissolved, he shall petition the probate court. Procedures for making this determination shall be adopted by the governing body of a facility or program.

(3) A facility or program director shall periodically review the need for guardianship where a facility or program staff member petitioned on behalf of a facility or program or where an interested person or entity filed a petition at the request of a staff member. This review shall be conducted once annually in the same manner as a determination of need for guardianship proceedings. In facilities, the review shall be made at the time of a periodic review. When the duration indicated in a court order of such a guardianship expires or is soon to expire, a person's continued need for the same type and scope of guardianship may be reviewed in the same manner as a periodic review.

(4) A report of an informed consent board which concludes that an existing guardianship should be continued or renewed shall be made a part of the case record. Upon a recommendation that an expiring guardianship should be renewed, a facility or program director may cause a guardianship proceeding to be commenced pursuant to these rules.

(5) A guardianship periodic review report may be used to the extent appropriate as part of a guardian's report to a court when the department or a county program has been appointed guardian.

History: 1979 AC.

R 330.6031 Information on guardianship procedures.

Rule 6031. A county community mental health program providing services to the developmentally disabled shall provide information on guardianship procedures and on obtaining evaluations for guardianship proceedings on request to persons in the communities it serves. A facility receiving similar requests shall refer a person inquiring to an appropriate county community mental health agency or, if none is available, to another appropriate community agency. It shall not itself provide guardianship information unless the subject of an inquiry is a resident or other recipient of services from the facility.

History: 1979 AC; 1986 AACS.