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SECTION 1

Introduction

1.1 Introduction and Overview

Adults have a constitutional right to live their lives as they see fit, within the confines of the law. Inherent in this is the right of self-determination. Because of this, one of the basic tenets of the Department is that any intervention must be the least intrusive/restrictive alternative that is appropriate to address the needs of the individual. Therefore, all potential options should be thoroughly explored prior to seeking appointment of a guardian and/or conservator who will restrict the individual's constitutional rights to some degree. Less intrusive alternatives to guardianship/conservator appointment that should be considered include but are not limited to Health Care Surrogate (if assistance is only needed with health related decisions), Representative Payee (if the income is a government or other benefit) and others.

There are times when an adult may become incapacitated to the extent he/she is no longer able to make decisions on his/her own behalf. When certain criteria are met, he/she may need a guardian to be appointed to make personal decisions on his/her behalf. A guardian may be appropriate when 1) the decisions with which assistance is needed extend beyond medical decisions and 2) the adult has not designated anyone to assume decision-making for them, such as through execution of a durable power of attorney, or other advanced directive.

A guardian may be appointed to make personal decisions for an individual who is unable to make these types of decisions independently. In order for a guardian to be appointed, a petition requesting this type of appointment must be filed with the Circuit Court. If, during the Guardianship hearing, it is determined by the court that the adult meets the definition as a "protected person" under the Guardianship and Conservatorship Act, a guardian may be appointed to assist the protected person with personal decisions. The authority of the guardian may extend to all personal decisions affecting the protected person or may be limited in scope or duration by the court. It is always preferable to pursue the least intrusive type of appointment that is appropriate to meet the individual's needs (i.e. temporary guardian, limited guardian, full guardian). The Department of Health and Human Resources may be appointed to serve as guardian in instances where there is no one willing and able to serve in this capacity.

Guardians have a fiduciary duty to the protected person. A fiduciary duty means that a special relationship of trust, confidence, or responsibility exists. When the Department is appointed to serve as guardian, this duty legally obligates the Department to act in the best interest of the protected person. An appointed guardian who fails to fulfill his/her fiduciary duty may be held personally liable for a breach of that duty.

When the assistance needed extends to decisions related to managing the protected person's financial affairs and estate, the court may appoint a conservator. The Sheriff, of the county in which the petition is filed, is the entity designated to serve as conservator for a protected person in instances when a conservator is needed but there in no one who is willing and able to serve in this capacity. The Department may not be appointed to act as conservator (WV Code§44A-1-8). If the Department is present during a hearing where the Department is ordered by the court to be conservator under these circumstances, the Department should object during the hearing so the objection is noted in the court record. Immediately following the hearing/notification the Adult Service worker needs to consult with their immediate supervisor and/or Legal Counsel for Adult Services for assistance.

The role of the guardian is distinguished from the role of a conservator by the nature of the decisions they are each authorized to make. Guardians are authorized to make certain personal decisions while conservators are authorized to make financial decisions.

Appointment of a conservator is a mechanism for assuring the protection of financial income and assets of incapacitated adults. State statutes require that the court select the individual or entity that is best qualified to act in the best interest of the protected person, ability of the conservator to carry out the duties and responsibilities of the office, and commitment to promoting the protected person's welfare. A conservator appointed under the provisions of WV Code §44A-1-8 must be the least restrictive possible and the powers granted shall not extend beyond what is necessary to assure the protection of the individual. Appointment of a conservator severely limits the rights of the protected person to act on their own behalf. The local Sheriff may be appointed as conservator of last resort.

Note: While the statute allows a Guardian ad litem to be appointed for an individual under the age of eighteen (18) years old, this does not come under the jurisdiction of Adult Services, unless the individual has been emancipated. Also, if the client has an appointed guardian and if their assets aren't significant to warrant a conservator a Representative Payee can be arranged to help assist with the individual's financial assets.

A reasonable attempt will be made to accommodate individuals with disabilities and examples of this include: Auxiliary aids for individuals with disabilities where necessary to ensure effective communication with individuals with hearing, vision or speech impairments will be arranged and provided. All offices have the capability to accommodate individuals that utilize TTY equipment. If further assistance is needed, the worker will contact the local Division of Rehabilitation as well as the West Virginia Commission for Deaf and Hard of Hearing at (304) 558-1675. The TTY toll free number is 1-866-461-3578.

Culturally competent practice is ensured by recognizing, respecting and responding to the culturally defined needs of individuals that we serve. If someone is in need of an interpreter, the worker must contact local resources to locate an interpreter. Examples include, but are not limited to, the Board of Education, local colleges and Division of Rehabilitation. If a local community resource cannot be located, the worker will seek other resources such as the Department of Justice Immigration and Naturalization Service at (304)347-5766, 210 Kanawha Boulevard, West, Charleston, WV 25302. If an interpreter is used, confidentiality must be discussed with this individual, reminding them that all information is confidential and must not be shared with anyone.

1.2 Statutory Basis

The West Virginia Guardianship and Conservatorship Act, originally enacted in 1994, contained in WV Code §44A-1-1of the West Virginia State Code. This Act outlines the circumstances under which a guardian or conservator may be appropriate, the process to be followed in order for a guardian or conservator to be appointed, and the duties and responsibilities of appointees. In situations where a guardian is needed, but there is no one willing and able to serve in this capacity, the Department may be appointed. If, a conservator is needed and there is no one willing or able to serve, the local Sheriff may be appointed WV Code §44A-1-8.

Any adult individual may be appointed to serve as a guardian, a conservator or both upon a showing by the individual of the necessary education, ability and background to perform the duties of guardian or conservator and upon the determination by the court that the individual is capable of providing an active and suitable program of guardianship or conservator for the protected person. The individual may not be employed by or affiliated with any public agency, entity or facility that is providing substantial services or financial assistance to the protected person under the provisions of WV Code §44A-1-8.

Prior to passage of the Guardianship and Conservatorship Act, appointment of committees and guardians were made under the provisions of WV Code §27-11-1 et seq. Appointments made under that statute remain in effect until such time as the appointment is terminated, revoked or modified. When any of these three actions occur, they are required to be done in accordance with the provisions of the Guardianship and Conservatorship Act WV Code§44A. Any subsequent appointments by the Circuit Court must also be done in accordance with these provisions.

1.3 Mandates for the Appointee

Whenever the Department has been appointed to serve as guardian for a protected person, unless the appointment is limited by the order of appointment, the guardian has the following responsibilities as they carry out their duties in this capacity as defined by West Virginia State Code. Please note, in some instances the Department's policy will be more stringent than the WV State Code.

a. Obtaining provision for and making decisions related to the adult's care, health, habilitation, education, therapeutic treatment, and residence;

b. Maintain ongoing regular contact with the protected person, every six months at a minimum, in order to know and adequately represent their capabilities, strengths, limitations, needs, and opportunities;

c. Seek authorization of the court prior to authorizing a) the protected person's move to another state, b) termination of protected person's parental rights, c) change in the protected person's marital status, d) deviation from an existing medical advance directive duly executed by the protected person prior to the court's determination of incompetence or e) revocation or amendment of a durable power of attorney duly executed by the protected person prior to determination by the court of incompetence;

d. Exercise authority only to the extent necessary, as determined by the protected person's limitations;

e. Where feasible, encourage the protected person to participate in decisions made on their behalf, to act on his/her own behalf to the extent possible and to develop or regain the capacity to manage his/her own affairs to the extent possible;

f. Consider the expressed desires and personal values of the protected person, when known, in making decisions on his/her behalf and when these are not known, to act in the best interest of the protected person, exercising reasonable care, diligence, and prudence; and,

g. Prepare and file periodic reports with the court.

Note: When the Department is appointed, a bond is not required and the mandatory training can be waived by the court, WV Code §44A-1-9. If another individual is named guardian other than the Department that proposed individual will be required to receive educational material or training, unless waived by the court. The proposed guardian must complete the training within thirty (30) days, and then file an affidavit to the court certifying that they have done so. The proposed guardian may be required to take an oath promising to faithfully perform their duties as guardian. The court will determine whether the proposed guardian must post a bond. This is at the court's discretion and can be waived. When authorization of the court is required in advance; as outlined above in C, the adult service worker should advise his/her supervisor immediately and promptly refer the matter to the appropriate Legal Counsel for Adult Services for review and assistance.

1.4 Procedures for Requesting Guardianship Services

Any interested person, including but not limited to the individual alleged to be a protected person, a person responsible for the individual's care or custody, a facility providing care to the individual, a person the individual nominated as guardian or conservator, a de-facto guardian or conservator, the Department or others, may file a petition to request appointment of a guardian and/or conservator. In situations where it is believed that a guardian or conservator is needed and no one is available or willing to file the petition, the Department may file. For specific information about how to file a Petition to request appointment of a guardian and/or conservator see Filing a Guardianship Petition.

1.5 Definitions

Advance Directives: Mechanism used by individuals to make health care decisions prior to their potential incapacity. State law recognizes living wills, medical power of attorney and durable power of attorney that include provisions for making medical decisions as advance directives. WV Code §44A-1-3.

Note: DHHR Departmental and Adult Services staff is prohibited to assist with the completion of Advance Directives.

Change of Venue: This is a legal process whereby the court with jurisdiction over a guardianship proceeding may transfer jurisdiction of the proceeding to a court in another county or state pursuant to WV Code §44A-1-7. A guardian and/or conservator shall continue to file their respective reports and/or accountings to the court that has jurisdiction over the proceeding.

Conservator: A person appointed by the Circuit Court who is responsible for managing the estate and financial affairs of a protected person.

a. **De facto Conservator:** A person who is not the power of attorney representative or appointed surrogate and has assumed substantial responsibility for any portion of the estate and financial affairs of another person later found to be a protected person.

b. **Limited Conservator:** A person appointed by the Circuit Court who has only those responsibilities for managing the estate and financial affairs of a protected person, as specified in the order of appointment.

c. **Temporary Conservator:** A person appointed by the Circuit Court who has only those responsibilities for managing the estate and financial affairs of a protected person, as specified in the order of appointment. A temporary conservator is time limited to six (6) months unless terminated or extended by the Circuit Court upon good cause following a hearing.

Do Not Resuscitate (DNR): A written, signed directive by a capacitated individual directing the health care provider not to administer cardiopulmonary resuscitation or any mechanical means to prolong or continue life.

Durable Power of Attorney: A written, signed directive by a capacitated individual designating another person to act as their representative. The durable power of attorney specifies the areas in which this individual can exercise authority. A Durable Power of Attorney will become effective or remain effective in the event the individual becomes disabled or incapacitated.

Emancipated Minor: A child over the age of sixteen (16) who has been emancipated by 1) order of the court based on a determination that the child can provide for his physical well-being and has the ability to make decisions for himself or 2) marriage of the child. An emancipated minor has all the privileges, rights and duties of an adult including the right to contract WV Code §49-7-27.

Estate: Any real and personal property or any interest in the property and anything that may be the subject of ownership.

Fiduciary Duty: Means that a special relation of trust, confidence, or responsibility exists. This duty legally obligates one entity/individual to act in the best interest of another. A guardian has a fiduciary relationship to a protected person.

Guardian: A person appointed by the Circuit Court who is responsible for the personal affairs of a protected person.

a. **De facto Guardian:** A person who is not the medical power of attorney representative or appointed surrogate and has assumed substantial responsibility for any of the personal affairs of another person later found to be a protected person.

b. **Limited Guardian:** A person appointed by the Circuit Court who has only those responsibilities for the personal affairs of a protected person, as specified in the order of appointment.

c. **Temporary Guardian:** A person appointed by the Circuit Court who has only those responsibilities for the personal affairs of a protected person, as specified in the order of appointment. A temporary guardian may be appointed upon finding that an immediate need exists, that adherence to the procedures otherwise set forth in WV Code §44A-1-4 for the appointment of a guardian may result in significant harm to the person that no other individual or entity appears to have the authority to act on behalf of the person, or that the individual or entity with authority to act is unwilling, unable or has ineffectively or improperly exercised the

authority. A temporary guardian is time limited to six (6) months unless terminated or extended by the Circuit Court upon good cause following a hearing.

Guardian Ad Litem: A guardian appointed by a court to protect the interest of an incapacitated adult in a particular matter. State employees are prohibited from serving as Guardian Ad Litem.

Health Care Surrogate: An individual eighteen (18) years of age or older appointed or selected by an attending physician or advanced nurse practitioner to make medical decisions on behalf of an incapacitated individual.

Incapacity: The inability because of physical or mental impairment to appreciate the nature and implications of a health care decision, to make an informed choice regarding the alternatives presented and to communicate that choice in an unambiguous manner.

Incompetence: A legal determination that an individual lacks the ability to understand the nature and effects of their acts and as a result is unable to manage his/her business affairs or is unable to care for his/her physical well-being thereby resulting in substantial risk of harm.

Interested Person: A person who is the subject of a guardianship or conservator proceeding, an appointed guardian or conservator, or any other person with an actual and substantial interest in the proceedings either generally or as to a particular matter.

Living Will: A written, witnessed advanced directive governing the withholding or withdrawing of life prolonging intervention, voluntarily executed by a person in accordance with the provisions of WV Code §16-30-3.

Medical Power of Attorney: A written, witnessed advanced directive that authorizes an individual that is at least 18 years of age to make medical decisions on behalf of another individual. A medical power of attorney must be duly executed prior to the individual becoming incapacitated and duly executed in accordance with the provisions of WV Code §16-30-3. or existing and executed in accordance with the laws of another state.

Missing Person: An adult individual, eighteen years of age or older, who is absent from his/her usual place of residence in the state and whose whereabouts are unknown for a period of six (6) months or more.

Most Integrated Setting: Is defined in the Olmstead Decree as a setting which enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible.

POST Form: The Physician Orders for Scope of Treatment (POST) is a form developed for the purpose of documenting orders for medical treatment and directives concerning provision of CPR, code/no code, level of intervention, etc. WV Code §16-30-25.

Protected Person: An adult individual, eighteen (18) years of age or older, who has been found by the court, because of mental impairment, to be unable to receive and evaluate information effectively, or to respond to people, events and environments to such an extent that the individual lacks the capacity to a) meet the essential requirements for his/her health, care safety, habilitation or therapeutic needs without the assistance or protection of a guardian OR b) manage property or financial affairs or to provide for his/her support or for the support of legal dependents without the assistance or protection of a conservator. A protected person is also defined as a person whom the court has determined is a missing person.

Representative Payee: An individual appointed by the funding source to handle that individual's benefits.

Surrogate Decision-Maker: Means an individual identified as such by an attending physician in accordance with the Health Care Decisions Act, WV Code §16-30-3

SECTION 2

Intake

2.1 Eligibility Criteria

Anyone who believes that an individual is in need of a guardian/conservator but who is believed to have no one to act in this capacity may request Guardianship Services by contacting the Department. In addition, if someone is willing and able to serve as guardian/conservator, but is unfamiliar with the filing process, the Department may assist on a short term basis. For specific information about how to file a petition to request appointment of a guardian and/or conservator see Filing a Guardianship Petition.

In order to be eligible to receive Guardianship Services provided by the Department the individual must meet certain minimal criteria. The final determination about whether or not Guardianship Services will be provided cannot be fully determined in most cases until after a thorough Initial Assessment is completed. The criteria which must be met at the intake phase of the case are as follows.

2.1.1 Criteria for Eligibility

The individual must meet all the following criteria:

a. Be at least seventeen (17) years, ten (10) months of age;

b. Be a resident of West Virginia;

c. Lack decision making capacity or, at a minimum, appear to have impaired/questionable decision-making capacity;

d. Need assistance with personal decisions in areas not limited to health related decisions;

e. Have no known advance directive duly executed and in effect or an advance directive is in effect but it does not adequately meet the alleged protected person's needs; and,

f. Have no known person who is willing and able to serve as guardian or have someone who is willing and able but needs assistance in filing the petition.

Note: For an adult who is a resident of a state operated long-term care facility, the petition may be filed by the Department, facility and/or third party to request that the Department be appointed guardian. The Department can also be appointed

and may serve as guardian for these individuals if someone other than the Department or the facility is the petitioner. State operated facilities to which this rule applies are: Jackie Withrow Hospital, Hopemont Hospital, Lakin Hospital, John Manchin Sr. Health Care Center, Welch Emergency Hospital, Mildred Mitchell Bateman Hospital and Sharpe Hospital.

2.1.2 Relationship to Other Department Social Services

Refer to Adult Protective Service and Foster Care Policy:

A. Adult Request to Receive Services

If there is an active Adult Residential or Health Care Surrogate case on an individual that needs a guardianship appointed, a Request to Receive Intake must be completed and the referral accepted. After intake, the Initial Assessment is to be shown as an incomplete assessment and associated to the open Request to Receive case and appropriate merging of client ID numbers completed.

B. Adult Protective Services

While a Guardianship case may be open as a result of involvement with Adult Protective Services, these two (2) case types must always remain separate. In this instance, a Request to Receive Intake must be completed, as well as the Initial Assessment and a Guardianship case opened separate from the APS case. These cases must be associated and appropriate merging of client ID numbers completed.

C. Foster Care Services

Whenever a child is in Foster Care and it is apparent that they will need a guardian when they reach age eighteen (18) and become an adult, the Department may petition to become the guardian, provided no one else is willing and able to serve. The petition process may begin when the child reaches age seventeen (17) years and ten (10) months. The Adult Services worker is to be included in the planning process beginning and when the child reaches age seventeen (17). The Adult Services worker will be an informal member of the Multi-Disciplinary Team (MDT) and will be identified as the secondary worker when the child reaches age seventeen (17) years six (6) months. If the plan is for a petition to be filed and the Department appointed guardian, a Request to Receive Intake must be completed when the child reaches age seventeen (17) years and ten (10) months. After completion of the Intake, the Initial Assessment must be completed and a Guardianship case opened separate from the Foster Care case. These cases must be associated and appropriate merging of client ID numbers completed.

Note: When the Department has a client seventeen (17) years of age in placement and is looking at Adult Services being guardian at eighteen (18) years of age, there may be situations that it is in the clients best interest to place the minor client in an adult placement. The general rule in Foster Care and Juvenile Service is that

children and adults cannot be placed together in the same facility. There are exceptions to this rule. Children transitioning to Adult Services can be placed in an Intermediate Care Facility/Intellectually Disabled (ICF/ID) or other similar placement type facilities even though the facility may not already be entered into FACTS. The Department should always place clients where and whomever is in their best interest. The Payment and Vender Maintenance Department at the State office (304)558-0997 has the responsibility of entering the provider into FACTS in these situations. The Payment Vender and Maintenance Department has the ability to enter the non-paid providers into FACTS that are not licensed by child welfare such as the ICF/ID facilities. Certain information has to be received prior to the Payment Vender and Maintenance Department can enter the information. The Adult Service worker needs to complete a W-9 concerning the provider and then attach it to The FACTS Provider Form. Both the W-9 and The FACTS Provider form are accessible through the Financial Clerk at the local DHHR office. The FACTS Provider form along with the W-9 then needs to be mailed to the state office Payment Vender and Maintenance Department.

Note: The Department as the appointed guardian can sign an FC-18 to allow the protected person to stay in certain placements if it is in the client's best interest. The protected person **should not** sign the FC-18.

2.2 Required Information

During the Intake process, information gathered must be as complete and thorough as possible. The individual identified as the "alleged protected person" in the intake process will become the "Adult Services client" within FACTS and will be reflected as such in the assessment and in the case areas. At a minimum, the following information must be gathered during the intake process and documented in FACTS.

2.3 Guardianship Referral

Information that must be collected when a Guardianship Services referral is received for an individual includes the following:

a. Name(s) of adult;

b. County of residence;

c. Current location of the adult;

d. Age/date of birth of adult;

e. Name of the facility (if applicable);

f. Contact person at the facility (if applicable);

g. Address of the adult's home/facility;

h. Phone number for the adult;

i. Type of facility;

j. Directions to the home/facility;

k. Name(s) and address' of all known individuals who may be able/willing to serve as guardian;

l. Name(s) and address' of all known individuals who are currently serving in a decision making capacity;

m. Other individuals involved in or who have knowledge of the adult's circumstances;

n. Information about any existing advance directives, if known;

o. Physical description of the adult;

p. Psychological description of the adult;

q. Name of referent or indication that referral was made anonymously if the referent is unwilling to give their name;

r. Referent address and telephone number;

s. Relationship of the referent to the adult;

t. How the referent knows of the information being reported/client's needs; and,

u. Any other relevant information.

In situations where referrals are received involving more than one household member as being in need of services (i.e. both a husband and his wife), each individual must be set up as a separate referral/case. Appropriate associating of these intakes/cases and merging of client ID numbers must be completed.

At the conclusion of gathering the referral information, the Intake worker may indicate if, in his/her opinion, the information reported constitutes imminent danger/emergency situation or a potential for danger requiring prompt attention by the supervisor. Selection of this choice will trigger a response time of "within five (5) days". If there is no indication that either imminent danger or potential danger

exists, FACTS will default to a fourteen (14) days response time. If the Intake worker indicates that there is imminent danger or there is a potential for imminent danger, he/she must document the reason(s) for this determination. The final determination regarding assignment of the appropriate response time rests with the supervisor. See the section titled Response Times for additional information.

When all referral information is gathered and documented in FACTS, a search of the FACTS system must be completed to determine if there are other referrals/assessments/cases for the identified client. Appropriate associating of Intakes/cases and merging of client ID numbers must be completed. The referral is then to be forwarded to the appropriate Adult Services supervisor for further action.

2.4 Referral Triage/Disposition

The supervisor is the primary decision maker at the intake stage of the Guardianship casework process. This is consistent with other Department policy which recognizes the unique blend of experience, skill, and leadership which supervisors provide.

2.4.1 Supervisor's Role

The supervisor's role includes:

a. Ensuring that all referrals are appropriately considered to determine if the referral is to be assigned for an Adult Services Initial Assessment or screened out.

b. For those assigned for assessment, determination of the required response time for the initial contact based on the degree of risk indicated in the referral information. Screening of referrals is to be done promptly, but in no instance is screening of the referral to exceed ten (10) calendar days from the date of referral.

2.5 Accept/Screen Out

The supervisor will complete the following tasks in making a determination about whether or not the intake is to be accepted or screened out and taking appropriate action based on that decision.

a. Review the information collected at intake for thoroughness and completeness;

b. Identify/verify the type of referral;

c. If not previously completed by intake worker, conduct a search of the FACTS system to determine if other referrals/investigations/cases already exist for the identified client;

d. Create associations in FACTS between the current referral and other referrals/assessments/investigations/cases as appropriate, as well as merge all duplicate client ID numbers;

e. Determine if the referral will be accepted for an Initial Assessment or if the referral will be screened out and not accepted for an Initial Assessment. In determining whether to accept a Guardianship referral or screen out the referral, the supervisor must consider:

f. The presence of factors which do/could present a risk to the adult;

g. The information related to the alleged protected person and their current circumstances;

h. Whether the information collected appears to meet the eligibility criteria for Adult Guardianship Services;

i. The sufficiency of information in order to locate the individual/family; and,

j. The motives and truthfulness of the reporter.

2.5.1 Referral Acceptance

If the referral is accepted:

a. Determine the appropriate response time for the referral based on the information presented on the intake; and

b. Assign the Referral for Initial Assessment; or

2.5.2 Screened Out Referral

If the referral is screened out:

Document the decision regarding screening;

a. Document the reason(s) for the screen-out decision; and/or,

b. Make referrals to other resources within and outside of the Department, if appropriate.

2.6 Response Times

A face-to-face contact must be made with the alleged protected person within fourteen (14) days from the date the referral is received by the agency. Depending

on the degree of risk to the client's health, safety and well-being, contact with the adult may require a face-to-face contact in less than fourteen (14) days. The policy rules for determining response time are as follow:

2.6.1 Response Time Options

a. Response - Within 5 Days this time frame will apply in cases where it is determined that, based on the referral information, a situation where a prompt response is critical (Example - A situation or set of circumstances which present a substantial and immediate risk to the alleged protected person.) A face-to-face contact with the alleged protected person must be initiated within five (5) days. This contact is to occur in the adult's usual living environment whenever possible.

b. Response - Within 14 Days This time frame will apply in cases where it is determined that, based on the referral information, a situation where a prompt response is critical does not currently exist and/or is not expected to develop
without immediate intervention. A face-to-face contact with the alleged protected person must be initiated within fourteen (14) days. This contact is to occur in the adult's usual living environment whenever possible.

Note: If "Time Critical Need" is selected by the intake worker, FACTS will trigger a response time of "five (5) days". If this is not selected by the intake worker, the response time will default to the "within fourteen (14) days" response time. The supervisor can change the response time recommended by the worker as long as this is done prior to the supervisor's approval of the intake.

2.6.2 Considerations in Determining Response Time

To assist with the determination of the appropriate response time for initiation of a Guardianship Initial Assessment, the supervisor should consider the following:

a. Whether the information reported indicates the presence of a situation requiring prompt attention;

b. Whether the alleged protected person has the physical, cognitive and emotional capacity to make decisions and independently act on them;

c. The location of the alleged protected person at the time the intake is received;

d. The potential/likely effect of intervention in escalating the circumstances in the home/facility and the capacity of the Department to remain with the situation once intervention is initiated;

e. Whether the circumstances that exist could change rapidly;

f. Whether the living arrangements are life threatening or place the adult at risk;

g. Whether the alleged protected person requires medical attention;

h. Whether the alleged protected person is without needed assistance and supervision;

i. Whether the alleged protected person is capable of self-preservation/protection;

j. Whether the alleged protected person is isolated socially or geographically;

k. Whether there are indications of family violence;

l. Whether the adult/family is transient or new to the community;

m. Whether the adult is currently connected to any formal support system;

n. Whether there are any family or friends available for support;

o. Whether there is a caregiver(s) and if so, are they physically, cognitively and emotionally able to provide needed care to the adult;

p. Whether there is a past history of referrals or current referrals requesting assistance;

q. Whether there are injuries; and,

r. Other relevant information.

2.6.3 Response Time Determination

Once the supervisor has made a determination regarding the response time they will:

a. Document the decision in FACTS indicating the selected response time and the date of this decision;

b. Assign the referral to an Adult Service worker to begin the Initial Assessment; and,

c. Follow-up to assure that the assigned Adult Services worker adhered to the designated response time.

SECTION 3

Assessment

3.1 Adult Initial Assessment

Once the referral is assigned to an Adult Service worker, completion of the Initial Assessment is to begin promptly and must be completed and documented in FACTS within thirty (30) days. Completion of the Initial Assessment involves gathering a variety of information about the client and his/her current status.

3.1.1 Information Gathered by Conducting a Series of Interviews

a. The client;

b. Caregiver (if applicable);

c. Potential guardians;

d. Others' having knowledge of the situation; and,

e. Other significant individuals.

3.1.2 Initial Process for Guardianship Services

This is the Initial Assessment phase for Guardianship Services. Information gathered during this Initial Assessment process will be focused on determining:

a. The level of risk the client's circumstances present to their well-being and safety;

b. Whether or not Guardianship Services are indicated;

c. If Guardianship Services are not indicated, what other services may be needed;

d. The availability of persons willing and able to serve as substitute decision-maker; and,

e. The role the Department is to play beyond the Initial Assessment.

In addition to gathering information, several critical questions must be considered when completing the Initial Assessment to determine whether the case is to be opened for Guardianship Services or the Initial Assessment is to be closed.

3.1.3 Additional Information for Initial Assessment

Critical information to determine whether the Guardianship case is to be opened or closed includes the following:

a. Is the alleged protected person safe or can his/her safety be arranged/assured through resources available to him/her? (Resources include financial, social, familial, etc.);

b. Does the alleged protected person appear to meet eligibility criteria for Guardianship Services?

c. Does the alleged protected person appear to have/lack decision-making capacity?

d. What type of decisions does the alleged protected person need assistance with? (health care only, some/all personal, some/all financial);

e. How long is it anticipated that the alleged protected person will need assistance with decisions? (health care only, some/all personal, some/all financial);

f. Does the alleged protected person have an acting substitute-decision maker? (Guardian, Conservator, De facto Guardian, De facto Conservator, Health Care Surrogate, Medical Power of Attorney, Power of Attorney, Representative Payee, etc.);

g. Does the alleged protected person have any advance directive in effect? (Living Will, DNR, Power of Attorney, Medical Power of Attorney, etc.);

h. If Guardianship Services will not be provided, are referrals to other resources needed?

3.2 Time Frames

Time frames for initiation of the Initial Assessment are determined by the supervisor. It is critical that the Adult Service worker complete a face-to-face contact within the assigned time frame. The options are “within five (5) days” and “within fourteen (14) days”. This contact is to be documented in FACTS within twenty-four (24) hours of completion of the contact. Documentation is to be pertinent and relevant to carrying out the activities necessary to complete the Initial Assessment.

The Initial Assessment process, including all applicable documentation in FACTS, must be completed within thirty (30) calendar days from the day the referral is received. In order to complete the Initial Assessment process, in addition to the

alleged protected person, the caregiver (if applicable), potential guardians, witnesses, and all other relevant parties must also be interviewed.

3.3 Extension Beyond Allowed Time Frame

Because of the critical nature of Guardianship Services, it is essential that face-to-face contact with the alleged protected person be made by the Adult Service worker within the response time assigned by the supervisor. No extensions will be granted for the face-to-face contact beyond the assigned time frame. In very unique situations, extenuating circumstances may exist that prevent the Adult Service worker from meeting the applicable time frames for completion of the Initial Assessment within the allotted thirty (30) days. Should additional time be necessary in these rare situations, the Adult Service worker must request an extension on the Extension Screen. This request must be submitted to the supervisor prior to the end of the thirty (30) day period for completion of the Initial Assessment. At a minimum, this request must clearly state the following:

a. Explanation of why the assigned time frame cannot be met;

b. Statement of the extenuating circumstances that exist;

c. Estimation of the amount of additional time required (not to exceed fourteen (14) calendar days); and,

d. Other relevant information.

The supervisor will review the request and render a decision on or before the due date for completion of the Initial Assessment. In no instance, shall an extension exceed fourteen (14) calendar days beyond the due date of the Initial Assessment.

3.4 Assessing Eligibility

In order for an individual to be eligible to receive Adult Guardianship Services provided by the Department, the following criteria must be met:

a. Age seventeen (17) years ten (10) months or older;

b. A resident of West Virginia;

c. Decision-making ability is impaired to the point that a substitute decision maker is believed to be needed;

d. Decision-making assistance extends beyond health related decisions only;

e. No one willing and able to serve; and,

f. Have no known Advance Directive duly executed and in effect.

3.5 Decision-Making Capacity

Based on the information gathered during the Initial Assessment, the Adult Service worker is to make a determination as to whether or not the client appears to have the capacity to make independent decisions on his/her own behalf, to understand the consequences of those decisions and to act on these decisions to meet his/her needs. The determination of the client's decision-making capacity is to be documented in FACTS. If the Adult Service worker believes that the client lacks decision making capacity, the reason(s) for this conclusion must also be documented. Documentation must include information regarding a legal determination of incapacity, if applicable, or worker observations leading to this conclusion if there is no indication that there has been a legal determination. Observations may include but are not limited to physical/medical/emotional conditions as well as orientation to time, place, person, etc.

3.6 Assessment of Risk

A critical component of the Initial Assessment process is determining whether or not the alleged protected person is at risk of injury or harm. This determination is made based on the client's circumstances, reported on the referral and/or observed during the Initial Assessment. Examples of circumstances that may exist that could be an indication of risk, include the following:

a. No established residence;

b. Inadequate/substandard housing;

c. Suicidal gestures/statements;

d. Self- destructive behavior;

e. Violent/physically aggressive;

f. Confused/disoriented;

g. Misuse/abuse of alcohol and/or drugs;

h. Behaviors that provoke a serious reaction from others;

i. Peer relationships reinforce/promote problematic behaviors;

j. Client's behavior is a threat to self or others;

k. Family members are violent to each other; and,

l. Lack of support system.

This is not intended to be an all-inclusive list. Further, the presence of any one or combination of these in and of itself would not mean that risk is present in every case. It is essential to consider all of the client's circumstances in making a determination about the presence or lack of risk to the client and to document these findings on the appropriate screens in FACTS.

3.7 Short-Term Service Planning

As the final part of the Initial Assessment, the Adult Service worker is to develop a short-term Service Plan.

3.7.1 Requirements for Service Planning

Requirements for a short term Service Plan may include:

a. A case will be opened for any social service; or,

b. A case will not be opened for any social service but there is some additional follow-up that is required in order to bring the Initial Assessment to resolution.

Consideration is to be given to both short and long term planning including planning for eventual discharge from Guardianship Services as appropriate these two (2) situations are described below:

A. Department will provide social services beyond Initial Assessment
In this situation, the short-term Service Plan is to briefly document the tasks that are to be accomplished in the immediate future. This plan should be of a very limited duration, and should in no instance exceed thirty (30) days. This plan will be in effect until the Comprehensive Assessment and regular Service Plan are completed.

B. Department will NOT provide social services beyond Initial Assessment
In this situation, the short-term Service Plan is to document the tasks that have been accomplished during the Initial Assessment process. A brief statement of the task is to be documented on the plan (i.e. referral for in-home services, referral for home delivered meals, etc.).

Information to be gathered for the Service Plan should include:

a. Who was contacted;

b. When contact was made; and,

c. The results of the contact(s) are to be made on the Contact Screen in FACTS. In this situation, the short-term Service Plan will end at the point the Initial Assessment is approved and closed.

Note: The short-term Service Plan is primarily intended to be a way for the worker to document what tasks the Agency has implemented/is going to implement until the Initial Assessment is completed or prior to completion of the regular Service Plan. This may also include tasks assigned to other parties. It is part of the Initial Assessment and does not require signatures.

3.8 Conclusion of Initial Assessment

The final step in the Initial Assessment process is to determine, based on the information gathered, whether or not Guardianship Services provided by the Department are needed and a Guardianship Services case opened.

3.8.1 If the Department is to Petition for Appointment of a Guardian

In order for a Guardianship case to be opened, the adult must have been determined to meet one of the two (2) following sets of criteria:

A. If the Department is planning to petition for appointment of a guardian the client must:

1. Be at least seventeen (17) years, ten (10) months of age;
2. Be a West Virginia resident;
3. Lack decision making capacity as determined by a physician/psychologist's evaluation, or appear to have impaired/questionable decision-making capacity which should be evaluated by a physician or psychologist;
4. Need assistance with personal decisions in areas not limited to health related decisions;
5. Have no known advance directives duly executed and in effect;
6. Have no known person who is willing and able to serve as guardian; and,
7. Have been determined by the Circuit Court to meet the definition as a "protected person" and to be in need of a guardian and/or conservator or the Department is preparing to file a petition for appointment of a guardian.

B. If the Department is planning to assist an interested person in petitioning for appointment of a guardian and/or conservator the client must:

1. Be at least seventeen (17) years, ten (10) months of age;

2. Be a West Virginia resident;

3. Lack decision making capacity as determined by a Physician / psychologist's evaluation, or appear to have impaired/questionable decision-making capacity which should be evaluated by a physician or psychologist;

4. Have one or more person who is willing and able to serve as guardian and/or conservator; and,

5. Have an interested person who is preparing to file a petition for appointment of a guardian and/or conservator with the Department's assistance. (The intent in this situation is that the Department will not be appointed, however, this is ultimately the court's decision).

Note: In a situation where all the individual needs is information and general guidance about where and how to file a petition, the Initial Assessment may be closed after this information is provided. It is not necessary to open a Guardianship case in this situation. Conversely, if the person needs significant assistance and guidance throughout the petitioning and court process, a Guardianship case should be opened.

3.8.2 Disposition of Guardianship Referrals/Assessments

The following requirements apply regarding disposition of guardianship referrals/assessments:

a. If the client meets all the eligibility criteria and the Department will be filing for appointment of a guardian, the case MUST be opened for Guardianship Services;

b. Any time an individual is open in the FACTS system for multiple case types under Request to Receive Services, (i.e. Adult Residential, Guardianship, Health Care Surrogate and Homeless), the case type with associated payments takes priority. If none of the case types have associated payments, Guardianship Services will be the primary case type.

3.9 Initial Assessment Disposition Options

When the Initial Assessment is completed, all the information and findings are to be documented in FACTS. All areas identified as a problem area in the Initial Assessment process must be addressed on the Service Plan. The Adult Service worker will then submit the Initial Assessment, along with their recommendation about disposition of the assessment, to the supervisor for approval. The possible dispositions available to the Adult Service worker are:

a. Close the Initial Assessment and open a Guardianship case;

b. Close the Initial Assessment and refer to other resources (internal/external to Department); or,

c. Close the Initial Assessment with no additional action needed.

The disposition shall be based on all the information gathered during completion of the Initial Assessment. From this information, the Adult Service worker will determine eligibility of the client for Guardianship Services provided by the Department. Notification of the disposition is to be provided to the requester of services and the client by completion of the Notification of Application for Social Services (SS-13) and saved to the file cabinet in FACTS.

SECTION 4

Case Plan

4.1 Service Planning

Following completion of the Comprehensive Assessment process, a Service Plan must be developed to guide the provision of services in the ongoing stage of the case, and should give consideration to both short and long term planning including planning for eventual discharge from Guardianship Services as appropriate. Service planning must be primarily directed toward meeting the needs of the alleged protected person including alleviating the risk of danger/harm to the adult. In developing a Service Plan, consideration should be given to the major service needs that exist as well as the strengths of the protected person, their expressed wishes and personal values, if known, and their best interest. Based on the circumstances, it may also be appropriate to include a plan to reduce risk and assure safety of the adult. Services needs are to be addressed in priority order beginning with the most emergent issues.

Development of the Service Plan is to be based on the findings and information collected during the assessment/evaluation processes (i.e. Initial Assessment, Comprehensive Assessment, case review) as well as any specific requirements set forth by order of the court. Based on the information gathered, goals must be identified and set forth in the Service Plan. These will provide the milestones for assessing progress and success in the implementation of the plan. The Service Plan provides a written statement of the goals and desired outcomes related to the conditions identified through the assessment processes. Each area identified in the Initial Assessment as a “problem area” must be addressed in the Service Plan.

Development of the Service Plan is to be a collaborative process between the Adult Service worker, the client, and others such as financial representative, residential provider, family members and service providers. For adults who are in a supervised living setting, the adult may have more than one plan directing their care. The plan between the Department, the protected person and other relevant parties is to specifically address the goals and objectives related to carrying out the duties as guardian. This may include tasks such as referral and linkage with appropriate resources, maintenance in the most integrated placement setting, addressing medical/social needs not addressed by the supervised living setting and others. It is not necessary to duplicate the details contained in the facility/agency plan but the Department’s plan should address whether or not the facility/agency meets the adults needs. A copy of the facility/agency plan should be filed in the client’s paper record and its location recorded in Document Tracking. Those individuals who were involved in the development of the Department’s Service Plan should also be involved in making changes/modifications to the plan.

Document the details of the Service Plan in FACTS, clearly and specifically delineating the plan components. When completed, forward to the appropriate supervisor for approval. After review by the supervisor, a copy of the Service Plan is to be printed and required signatures obtained. In the event an individual refuses to sign or is unable to sign, the worker should make a notation explaining why the signature was not obtained. Required signatures include the client or his/her legal representative(s), (if applicable), a representative from the supervised living setting, (if applicable) and all other responsible parties identified in the Service Plan. The signed copy is then to be filed in the client record and the location documented in FACTS. A copy of the completed, signed Service Plan is to be provided to all of the signatories. The Adult Service worker would also need to save the document to Document Tracking and the file cabinet of the case.

Note: The Service Plan is available as a DDE in the reports area of FACTS.

4.2 Inclusion of the Incapacitated Adult in Service Planning

Inclusion of incapacitated adults in the Service Planning process presents the Adult Service worker with some unique challenges. Although legally determined to lack decision-making capacity, the client may have the capacity to participate in the development of the Service Plan and should be permitted and encouraged to participate in its development to the extent they are able, including signing of the completed document. Some special considerations for the Adult Service worker include the following:

a. The guardian is charged with the responsibility of acting in accordance with the known or expressed wishes and values of the protected person to the extent possible, and when their wishes and values are not known, acting in their “best interest”. When the “best interest” of the protected person is in conflict with the protected person’s expressed wishes, the final decision rests with the guardian and should take into consideration the client’s values, strengths, and limitations;

b. When the Department has been appointed by the court to serve as guardian and the court has also appointed a conservator, the conservator must be respected as the spokesperson for the client’s financial matters. Generally, the conservator’s consent must be obtained in financial matters included on the Service Plan. If it appears that the court appointed conservator is unwilling or unable to fulfill their obligation as conservator, the Service Plan must address seeking a change in the client’s conservator;

c. When the client has an ongoing informal support that will be continuing as part of the Service Plan (e.g. relative, neighbor, friend, etc), this

individual should be included in the service planning process and may sign the Service Plan. The relationship of the informal representative is to be documented in the client record.

The situations listed above are the most likely to occur and require consideration by the Adult Service worker. Variations, however, may occur and could require consultation between the Adult Service worker and his/her supervisor to determine the most appropriate approach.

4.3 Determining the Most Integrated Level of Intervention

In the provision of services to adults, the principle is well established both in law and policy that the least intrusive means of intervention should always be used. When applying this principle to individual situations there is some discretion in determining the appropriateness of the manner in which the Department intervenes in the life of the client and the level of care/assistance required in order to meet the client's needs. Intervention is to begin with the least intrusive approach that is appropriate to meet the client's needs. Intervention is to move from the least intrusive to the most intrusive option(s).

The principle of most integrated intervention requires a commitment to the maximum level of self-determination by the client. The client should be permitted and encouraged to participate in the decision-making process to the extent of their ability. Substitute decision-makers should participate within the scope of their authority. The Service Plan is used to document these choices and to ensure the integrity of the decision-making process.

It is important to clearly document the efforts made to assure the most integrated level of intervention. In the event these efforts are unsuccessful, this fact and the reason(s) they were not successful must also be clearly documented in the case record.

4.4 Required Elements – General

The Service Plan must contain all the following components in order to assure a clear understanding of the plan and to provide a means for assessing progress:

a. Specific criteria which can be applied to measure accomplishment of the goals;

b. Specific realistic goals for every area identified as a problem, including but not limited to those identified through the assessment processes. This will include identification of the person(s) for whom the goal is established, person(s)/agency responsible for carrying out the associated task(s), identification of services, and frequency/duration of services;

c. Specific tasks which will be required in order to accomplish the goal. These are tasks or activities that are designed to help the client progress toward achieving a particular goal and should be very specific and stated in behavioral terms (specifically stating what action is to occur i.e. Mary Jones will attend adult day care at least once weekly to improve interpersonal skills). These tasks should be monitored frequently; and,

d. Identification of the estimated date for goal attainment, if applicable. This is a projection of the date that the worker and the client expect that all applicable

e. tasks will be achieved, that minimal standards associated with change will have been attained.

4.5 Other Considerations for Service Planning

a. The client's real and potential strengths;

b. Client's known and expressed wishes and values;

c. Attitudes, influences and interpersonal relationships and their real or potential impact on implementation of the Service Plan;

d. The circumstances precipitating involvement by the Department;

e. Availability/accessibility of client resources including human resources such as family and friends; and,

f. Levels of motivation.

4.6 Developing a Plan to Reduce Risk/Assure Safety

When it is determined through the assessment process that risk factors exist which compromise the safety of the adult, the identified problem areas must be addressed in the Service Plan. When developing a plan to assure safety of the client, it is important to involve them in the discussion of the behaviors which are problematic, options for managing the behaviors and, the formalization of a plan to address the behaviors and their cause(s). In situations where it is necessary to remove the adult from their current residence in order to assure their safety, the following should occur:

a. Identify the conditions that establish/support the need for a change in placement;

b. Identify the recommended alternate placement arrangement;

c. Identify the anticipated duration of the alternate placement arrangement;

d. Describe arrangements for visitation with family and friends, including any restrictions, if applicable; and,

e. Describe the efforts that have been made to prevent a change in placement and the results of these efforts.

SECTION 5

Case Management

5.1 Introduction

Case management is the ongoing service provided by the Department for clients who have been opened for Adult Guardianship Services. It consists of identification of problem areas, identification of appropriate services and resources to address the identified problems, referral of the client to appropriate service agencies, and coordination of service delivery. In addition, the Department as guardian is responsible for making decisions related to personal matters of the protected person as set forth in the Order of Appointment. While the Department does have an obligation to make decisions on behalf of the protected person and when appropriate make recommendations regarding services and assistance that are appropriate to address identified needs, the guardian cannot force the protected person to accept or comply with recommended services.

Note: Anytime the Department, as guardian and/or Health Care Surrogate, signs any document, it must include a disclaimer that clearly states that the Department is not accepting any financial responsibility for these arrangements. Signature should be "West Virginia Department of Health and Human Resources by (worker's name)".

5.2 Comprehensive Assessment

A thorough assessment must be completed for each individual who is opened for Guardianship Services. In order to develop a detailed understanding of the client and his/her needs, a Comprehensive Assessment must be completed. For Guardianship cases, information gathered while completing the Initial Assessment will carry forward into the case area of FACTS to create the first Comprehensive Assessment. The Adult Service worker will use the information gathered during completion of the Comprehensive Assessment as the basis for the client's Service Plan. The Comprehensive Assessment screens will not necessarily reflect all of the information outlined in the following sections. It is appropriate to gather all of the following information as part of the assessment process. The information will be documented on the Comprehensive Assessment screens as well as various other screens in FACTS.

5.3 Time Frames

A Comprehensive Assessment, including the development of the Service Plan, must be completed for each individual who is opened for Guardianship Services. This assessment must be completed within thirty (30) calendar days following the date the case is opened. A new Comprehensive Assessment must be completed annually. Changes that occur in the client's circumstances before the next annual completion of the Comprehensive Assessment are to be documented as a modification to the existing Comprehensive Assessment and are to be documented within forty-eight (48) hours of the time the worker becomes aware of the change.

5.4 Information to Be Collected

5.4.1 Identifying Information

Demographic information about the client, his/her family and his/her unique circumstances is to be documented. Information about individuals with whom the client has a relationship should be documented on the client screens and/or on the collateral screens as appropriate. This includes information such as (not an all-inclusive list):

a. Name;

b. Address (mailing and residence);

c. Date of birth/age;

d. Household members;

e. Other significant individuals;

f. Current legal representatives/substitute decision-makers (if applicable);

g. Potential decision-makers and indication of their willingness to serve;

h. Identification numbers (SSN, Medicaid, Medicare, SSA Claim, etc.);

i. Gender/ethnicity;

j. Marital status;

k. Advance directives in effect; and,

l. Directions to the home.

5.4.2 Services Requested

Document the specific service(s) being requested. This should include information such as the following:

a. The specific type(s) of assistance being requested;

b. Why assistance is being requested;

c. How are needs currently being met; and,

d. Other relevant information.

5.4.3 Living Arrangements

Documentation of information about the client's current living arrangements should include information about where the client currently resides such as the following:

a. Client's current location (own home, relative's home, hospital, etc);

b. Is this setting considered permanent/temporary;

c. Type of setting (private home/residential facility);

d. Household/family composition;

e. Physical description of residence (single family dwelling, duplex, townhouse, apartment, retirement community, foster home, group home, nursing facility, etc.);

f. Interior/exterior condition of the residence;

g. Type of geographic area (rural, urban, suburban, etc.); and,

h. Access to resources such as family/friends, transportation, shopping, medical care/services, social/recreational, religious affiliations, etc.

5.4.4 Client Functioning

Documentation of information about the client's personal characteristics should include information about how the client's personal needs are currently met, including an assessment of their strengths, needs and supports in areas such as:

a. Activities of daily living (ADL);

b. Whether or not his/her needs are currently being met and by whom;

c. Caregiver functioning, if applicable;

d. Ability to manage finances;

e. Ability to manage personal affairs;

f. Ability to make and understand medical decisions; and,

g. Assessment of decision-making capacity.

5.4.5 Physical/Medical Health

Documentation of information about the client's current physical and medical conditions should include a description of the client as observed by the worker during face-to-face contact, and information about his/her diagnosed health status.

Included are areas such as:

a. Observed/reported physical conditions of the client;

b. Primary care physician;

c. Diagnosed health conditions;

d. Current medications;

e. Durable medical equipment supplies used/needed; and,

f. Nutritional status.

5.4.6 Mental/Emotional Health

Documentation of information about the client's current and past mental health should include information about how the client is currently functioning, his/her current needs and supports, and his/her past history of mental health treatment involvement, if applicable. Included are areas such as:

a. Current treatment status;

b. Current mental health provider, if applicable;

c. Mental health services currently receiving;

d. Medication prescribed for treatment of a mental health condition;

e. Observed/reported mental health/behavioral conditions; and,

f. Mental health treatment history.

5.4.7 Financial Information

Documentation of information about the client's current financial status should include information about the client's resources and their ability to manage these independently or with assistance. Included are areas such as:

a. Financial resources - type and amount;

b. Other resources available to the client non - financial;

c. Assets available to the client;

d. Health insurance coverage;

e. Life insurance coverage;

f. Pre-need burial agreement in effect;

g. Information about client's ability to manage his/her own finances;

h. Outstanding debts/expenses;

i. Court ordered obligation for child support/alimony; and,

j. How and/or by whom finances are managed if client is unable to do so.

5.4.8 Educational/Vocational Information

Documentation of information about the educational/vocational training the client has received or is currently receiving should include information such as:

a. Last grade completed;

b. Field of study;

c. History of college attendance/graduation;

d. History of special licensure/training; and,

e. Current educational/training needs.

5.4.9 Employment Information

Document of the information about the client's past and present employment such as:

a. Current employment status;

b. Current employer;

c. Prior employment history; and,

d. Current employment needs.

5.4.10 Military Information

Document of the information about the client's military history, if applicable, this should include information such as:

a. Branch of service;

b. Type of discharge received;

c. Service related disability, if applicable; and,

d. Veteran eligibility for benefits (contact the local veteran representative).

5.4.11 Legal Information

Documentation of information about the client's current legal status should include information about all known legal representatives, and the specific nature/scope of that relationship. This should include information such as:

a. Assessment of client's decision-making capacity by the Adult Service worker;

b. Information about legal determination of competence, if applicable;

c. Information about efforts to have client's decision-making capacity formally evaluated; and,

d. Identification of specific individuals who assist the client with decision-making.

5.5 Conclusion of Comprehensive Assessment

When the Comprehensive Assessment is completed, all the information and findings are to be documented in FACTS. This along with the Service Plan that was developed as a result of the assessment findings are then to be submitted by the Adult Service worker to the supervisor for approval. Areas identified as problematic in the Comprehensive Assessment process are to be addressed on the Service Plan.

5.6 Filing a Guardianship Petition

Whenever an individual's ability to make decisions is impaired to such a degree that they are no longer able to make decisions on his/her own behalf without assistance, appointment of a guardian and/or conservator may be necessary to aid them in the decision-making process. Any interested person may file a petition to request the appointment of a guardian and/or conservator WV Code §44A-1-8. The following individuals are specifically identified in State Code as persons who may file:

a. The alleged protected person may file the petition on their own behalf;

b. A person who is responsible for the individual's care/custody;

c. The facility providing care to the individual;

d. A person the individual has nominated to serve as guardian and/or conservator;

e. A person acting as a De facto Guardian or De facto Conservator;

f. Any other interested person; and,

g. The Department of Health and Human Resources.

Note: For individuals who are residents in a state operated facility, the Department and/or facility can file a petition to have the Department named guardian. The Department may serve as guardian. The facility cannot serve as guardian. A petition can also be filed by the Department or someone else such as family members or any other third party who knows the client which can result in the Department being appointed. The Department should be notified of hearings if the petition states that the Department is to be the recommended guardian.

The petition must be filed with the clerk of the Circuit Court in the county where the alleged protected person resides, with two (2) exceptions. If the alleged protected person has been admitted to a health care facility or a correctional facility in another county, the petition is to be filed in the county where the facility is located.

If the alleged protected person has one or more Advance Directives in effect that adequately addresses their decision-making needs, it is NOT appropriate for the Department to file a petition for appointment of a guardian. If it is believed that the designated decision-maker(s) is not adequately addressing the alleged protected person's decision-making needs, it may be appropriate to file a petition for appointment of a guardian. If so, the reason(s) for filing must be clearly documented in the petition.

5.7 Petitioning Process

When the Department is the petitioner for the appointment of a guardian, the worker must file a Petition for Appointment of a Conservator/Guardian. When the original petition is being filed, the following process is to be used:

Complete the following forms:

a. Petition for the Appointment of a Conservator/Guardian;

b. Evaluation Report of a Licensed Physician/Psychologist, if this is available at the time of filing;

c. If the Evaluation Report is not available at filing, submit a Motion For Leave to File Petition Without Evaluation Report when the petition is filed - if this option is used, the Evaluation Report must be completed and be available and filed with the Circuit Clerk and a copy provided to the attorney for the alleged protected person prior to the hearing date;

d. Affidavit of Physician (submitted if alleged protected person is unable to attend); and,

e. Statement of Financial Resources if a conservator is to be appointed.

Note: All the forms referenced in the above section are Supreme Court forms and are available as DDE's in FACTS and/or the West Virginia Supreme Court website.

f. Attach other applicable documents, as available, such as Medical Power of Attorney, Durable Power of Attorney, Health Care Surrogate Appointment, Living Will, etc.;

g. File all the above items with the Circuit Clerk's office in the county where the alleged protected person resides

Note: if the alleged protected person is in a health care facility or correctional facility, the petition is to be filed in the county where the facility is located;

h. Arrange for payment of the filing fee; (If the alleged protected person has sufficient resources the worker should submit a request to the court for reimbursement from the estate for costs associated with filing the Guardianship Petition);

i. Arrange for Notice of Hearing to be sent/served to required parties once a hearing date has been set; and,

j. Attend hearing.

The court is responsible for appointing legal counsel for the alleged protected person. The primary focus of legal counsel is to assess whether or not a guardian/conservator is needed and limitations that are appropriate based on the needs of the alleged protected person.

5.8 Time Frames

There are various time frames associated with the petitioning process that the worker should be aware of. These include:

5.8.1 Filing before Age 18

The law provides for the filing of a petition for the appointment of a conservator/guardian prior to age eighteen (18) in certain circumstances. Filing prior to age eighteen (18) may be appropriate whenever it is apparent that a minor has impairments to such an extent that appointment of a guardian/conservator may be necessary once the individual becomes an adult. Filing under these circumstances may be done no earlier than age seventeen (17) years, ten (10) months. The Department may be the petitioner when a youth meets this criteria, is in the Department's custody, and in an out-of-home care placement.

5.8.2 Notification to Required Parties Prior to Hearing

The petitioner is responsible for providing notice to all required parties. Parties who

must be notified are:

a. The alleged protected person; and,

b. All other parties named in the petition, seven (7) years of age or older. The alleged protected person must be personally served with the Notice of Hearing, a copy of the petition, and the evaluation report NOT LESS than fourteen (14) calendar days prior to the hearing. Other parties named in the petition must be notified by certified mail, return receipt requested. This notification is to be mailed a minimum of fourteen (14) calendar days prior to the hearing date and is to include the Notice of Hearing and a copy of the petition.

Note: When determining the date to mail notifications to other parties, the date of the hearing is not to be counted as one of the fourteen (14) days. The protected person must be served by Personal Service of Process not later than fourteen (14) days prior to the date of the hearing. The court clerk can arrange to have this accomplished by the county sheriff. As an alternative, it may be necessary to employ a private process server. Because of potential conflicts of interest, The Department may not serve Personal Service of Process.

5.8.3 Notification to Required Parties Following Appointment

The appointee is responsible for providing notice to all required parties. Parties who must be notified are:

a. Alleged protected person; and,

b. All other parties named in the petition seven (7) years of age or older.

The protected person and all other parties named in the petition must be notified of the appointment by certified mail, return receipt requested. This notification is to be mailed within fourteen (14) days of the date of entry of the order. This notification is to include the Order of Appointment of Conservator and/or Guardian and a brief statement, in large print, of the party's right to seek an appeal for a modification or termination of the appointment.

5.8.4 Appealing an Appointment

An appointment of the Department as guardian/conservator may be appealed in certain circumstances. Examples of situations when the Department filing an appeal may be appropriate include:

a. The Department is appointed guardian without being a party to the action (did not receive notification prior to the hearing and was not present at the hearing);

b. When the Department has proposed a potential individual to serve as guardian but the Department is appointed instead;

c. When the Department is appointed to serve as conservator; and,

d. When the Department is appointed as a co-guardian or committee, and others.

If the Department is contesting an appointment as a guardian, the worker must file an appeal immediately upon receipt of notification of the appointment. This is accomplished by filing a Petition for Termination, Revocation or Modification requesting the necessary change in the appointment. If the Department is contesting appointment the Legal Counsel for Adult Services must be notified immediately. The Legal Counsel for Adult Services must file an appeal with the Circuit Court stating the basis for the appeal and requesting appropriate action.

5.8.5 Setting the Hearing

The hearing is to take place within sixty (60) days of filing the petition and the evaluation report. Upon filing of the petition the Circuit Clerk is required to set the hearing date. The hearing is to occur within the sixty (60) day time frame. The Circuit Clerk is to notify the petitioner of the hearing date.

5.8.6 Reports to the Court

A. Initial

The guardian is to file an initial report with the court within six (6) months following the date of entry of the order of appointment. This semi-annual report is only required during the first year of appointment, unless ordered otherwise by the court. Reporting thereafter is required on an annual basis. The report must include all of the following:

1. Description of the current mental, physical, and social condition of the protected person;

2. Description of the protected person's living arrangements during the reported period;

3. The medical, educational, vocational, and other professional services provided to the protected person and the guardian's opinion as to the adequacy of the protected person's care;

4. Summary of the guardian's visits with and activities on behalf of the protected person;

5. Statement of whether the guardian agrees with the current treatment or habilitation plan;

6. Recommendation as to the need for continued guardianship and any recommended changes in the scope of the guardianship;

7. Any other information requested by the court or useful in the opinion of the guardian;

8. Any compensation requested and the reasonable and necessary expenses incurred by the guardian; and,

9. Verification signed by the guardian stating that all of the information contained in the report is true and correct to the best of his/her knowledge.

This report must be prepared by the worker and approved by the supervisor prior to submission to the court.

Note: The Periodic Report to the Court is available as a DDE in FACTS and may be accessed through the report screen and/or the West Virginia Supreme Court webpage. Most of the information to complete this report will come from the Summary Evaluation screens.

B. Annual

The guardian must prepare and submit an annual report to the court that describes the protected person's functioning, progress, barriers and other relevant information during the report period. The completed report is to be submitted to the Circuit Clerk in the county of venue. In most instances this will be the county where the original appointment was done. If the court of appointment grants a change of venue, the report would be submitted thereafter to the new county of venue. The law provides for two (2) options related to the time frame to be used for submission of this annual report to the court. These are:

1. On a calendar year basis (if this option is used the report may not cover a period of more than twelve (12) months and must be filed with the Circuit Clerk no later than December 31st); or,

2. Other time frames as ordered by the court. This report must contain all the following:

3. Description of the current mental, physical, and social condition of the protected person;

4. Description of the protected person's living arrangements during the reported period;

5. The medical, educational, vocational, and other professional services provided to the protected person and the guardian's opinion as to the adequacy of the protected person's care;

6. Summary of the guardian's visits with and activities on behalf of the protected person;

7. Statement of whether the guardian agrees with the current treatment or habilitation plan;

8. Recommendation as to the need for continued guardianship and any recommended changes in the scope of the guardianship;

9. Any other information requested by the court or useful in the opinion of the guardian;

10. Any compensation requested and the reasonable and necessary expenses incurred by the guardian; and,

11. Verification signed by the guardian stating that all of the information contained in the report is true and correct, to the best of his/her knowledge.

12. This report must be prepared by the worker and approved by the supervisor prior to submission to the court.

Note: The Periodic Report to the Court is available as a DDE in FACTS and/or the West Virginia Supreme Court webpage and may be accessed through the Report screen. Information to complete the report will come from the Summary Evaluation screens. The Periodic Report can either be hand delivered or mailed to the appropriate Circuit Clerk's office (venue may differ).

C. Other Reports to the Court

In addition to the initial (semi-annual) and annual reports to the court, there are points in time when the court may require additional reports. These include:

1. Additional reports or accountings prescribed by the court;

2. When the guardian or conservator resigns or is removed; and,

3. When the appointment of guardian or conservator is terminated (this report may be waived by the court for a guardian).

These reports must be prepared by the worker and approved by the supervisor prior to submission to the court. Upon completion of the report, it is to be filed with the Circuit Clerk.

5.9 Fees/Costs

There are various fees that may be associated with the filing of a guardianship or conservator petition. The petitioner is responsible for these fees which are due when the petition is filed. Fees may be assessed for the following:

a. Filing fee - must be paid upon filing of the petition; and,

b. Fees for service of process (varies from one jurisdiction to another).

If the protected person's estate is sufficient, the Department may request reimbursement of costs incurred in filing the petition from the protected person's estate. If reimbursement is being requested, this must be requested during the hearing.

Note: While a filing fee is required according to the WV Code §44A-2-1 some jurisdictions waive this cost when the Department is the petitioner, or are willing to accept payment after filing of the petition. If unsure about the practice in the local jurisdiction, the worker may request that the filing fee be waived. If the filing fee is not waived by the court, the filing fee must be attached at the time the petition is filed with the Circuit Clerk.

5.10 Contents of the Petition

When a petition for the appointment of a guardian and/or conservator is filed it must contain certain information about the individuals who are involved, including the alleged protected person, the petitioner and other potential candidates for guardian/conservator. Information about individuals that must be provided includes the following:

5.10.1 Information about the Petitioner

a. Name;

b. Place of residence;

c. Post office mailing address;

d. Relationship to the alleged protected person; and,

e. Attorney representing the petitioner during the appointment proceedings, if applicable.

5.10.2 Information about the Alleged Protected Person

Gather information on the alleged protected person, to the extent known by the petitioner.

a. Name;

b. Date of birth;

c. Place of residence or location; and,

d. Post office address.

5.10.3 Information about the Alleged Protected Person's Relatives

a. Name(s);

b. Post office addresses of the alleged protected person's nearest relatives;

c. The spouse and children (age seven (7) and above), if any; or if none;

d. The parents and brothers and sisters, if any; or if none;

e. The nearest known relatives who would be entitled to succeed to the person's estate by intestate succession WV Code §42-1-3a.

Note: Once a relative or several relatives have been identified in one of the categories identified, relatives in a lower category do not have to be listed in the petition.

5.10.4 Information about Persons Acting in a Decision-Making Capacity to the Alleged Protected

If there are no known relatives but there are other individuals that serve in some decision-making capacity, the following information must be included for each of these individuals:

a. Name;

b. Place of residence or location;

c. Post office address;

d. Capacity in which they serve; and, a

e. detailed list of the acts performed by this person on behalf of the alleged protected person.

Specifically, list this information for all individuals who serve in any of the following roles:

a. Person or facility that is responsible for the alleged protected person's care or custody;

b. Person(s) acting as De facto Guardian or De facto Conservator;

c. Appointed health care surrogate;

d. Representative acting under a durable power of attorney;

e. Representative acting under a medical power of attorney;

f. Person nominated by the alleged protected person to serve as guardian and/or conservator.

5.10.5 Other Required Information

Statement regarding the type of guardianship/conservator being requested (limited, temporary, full);

The reason(s) for the request;

a. Existing Advanced Directives and the degree to which these tools address the needs of the alleged protected person;

b. Whether or not the alleged protected person will be able to attend the hearing and if not, why;

c. The individual(s) nominated to serve as guardian or conservator by the alleged protected person;

d. The individual(s) proposed to serve as guardian or conservator by the petitioner; and,

e. Other relevant details.

5.11 Explore all Potential Guardians Prior to DHHR Filing a Petition

Whenever the Department receives a request to serve as guardian or to file a petition for the appointment of a guardian or conservator, the worker must thoroughly explore all individuals who may be able to serve in this capacity.

If there is any available candidate(s) who is willing and able to serve, the Department should encourage them to petition and assist them with the petitioning

process if this is necessary. The Department should not file a petition for the Department to be appointed guardian if there is a candidate who is willing and able to serve.

5.11.1 Persons who may be Appointed Guardian

The following individuals and organizations may be appointed to serve as guardian for a protected person as per WV Code §44A-1-8.. Selection of a guardian must take a variety of factors into consideration. Primary among these is the potential guardian's ability to provide an active and suitable program of guardianship. Potential candidates who meet the criteria may come from one of the following categories:

a. Any adult individual may be appointed to serve as a guardian, a conservator or both;

b. A non-profit corporation chartered in the state of WV and licensed;

c. A public agency that is not a provider of health care services to the protected person;

d. A non-profit corporation appropriately chartered and licensed in the state of West Virginia for the purpose of serving as guardian, limited guardian or temporary guardian of protected persons;

e. Persons employed pursuant to a written contract or other employment agreement with a licensed provider of behavioral health services for the purpose of providing services to a protected person:

1. Where payment for services provided under the contract or agreement is pursuant to a waiver program;

2. Where the person is related to the protected person by blood, marriage, or adoption;

3. Where the contract or agreement is disclosed in writing to the court; and,

4. The court finds the appointment is in the best interest of the protected person.

f. The Department of Health and Human Resources may be appointed to serve as guardian only when it has been determined that there is no other individual, non- profit corporation or other public agency that is equally or better qualified and willing to serve.

Note: When a sheriff has previously been appointed guardian, and guardianship is being transferred to the Department of Health and Human Resources in accordance with Senate Bill 100, enacted April 11, 1997, the Department may not refuse to accept the guardianship appointment.

5.11.2 Persons who may not be Appointed Guardian

The following persons or entities may not be appointed guardian:

a. Individuals who are employed by or affiliated with any public agency, entity, or facility which is providing substantial services or financial assistance to the protected person (i.e., Adult Family Care Providers);

b. Corporation, agency, or other entity, or any agent thereof doing business with or in any way profiting from the estate or income of the protected person for whom services are being performed by the guardian;

c. Any person who has an interest as a creditor of a protected person, other than a bank or trust company authorized to exercise trust powers of engage in trust business in West Virginia; or,

d. The sheriff in the county in which a court has assumed jurisdiction.

Note: If the sheriff has been appointed as guardian, he/she may petition the Circuit Court to be released as guardian. A paid provider by the Department cannot serve as guardian because this would exhibit a conflict of interest. Paid providers by the Department would be considered to be employed by or affiliated with a public agency providing substantial services. Examples of such providers would be but not exclusive or limited to Adult Family Care, Specialized Family Care Providers and Assisted Living.

5.12 When the Department is the Petitioner

In situations where it is determined, based on the information gathered during the Initial Assessment process, that there is no one who is able and willing to serve as guardian and/or conservator, the Department may file a petition to be appointed to serve as guardian. If a conservator is required and there is no one able and willing to serve in this capacity, the petition should include a request that the local sheriff be appointed to serve as conservator. If there is a committee already in place the Department does not have to file to remove the committee, unless it is needed.

5.13 When the Department is assisting Another Person with Petitioning

In situations where it is determined that there is someone who is able and willing to serve as guardian and/or conservator, the Department may file or assist the individual in filing a petition requesting that they be appointed to serve as guardian

and/or conservator. This determination will be made by the worker and supervisor based on the information gathered during the Initial Assessment process.

5.14 Petitioning prior to the Alleged Protected Person's 18th Birthday

There are provisions in the statute to permit the filing of a petition for appointment of a guardian and/or conservator prior to an individual reaching the age of eighteen (18). This may be appropriate when it is believed that, based on the youth's physical, mental and emotional capacity, it is likely they will meet the definition as a "protected person" at the time they turn eighteen (18). In this instance the petition may be filed when the youth is at least seventeen (17) years and ten (10) months of age. Generally, when the Department is considering filing a petition under these circumstances it will involve a youth who is in the Department's custody and in an out-of-home placement. The hearing may not be held more than seven (7) days prior to the youth's eighteenth (18th) birthday if the hearing is held before a Circuit Judge, and not more that fourteen (14) days prior to the youth's eighteenth (18th) birthday if the hearing is held before the Mental Hygiene Commissioner. See Petitioning Process for detailed information about the filing process to be followed. Refer to Foster Care Policy.

5.15 Responsibility of the Worker

5.15.1 Prior to the Hearing

a. Complete Initial Assessment - within thirty (30) days of receipt of referral;

b. Determine if it is appropriate for the Department to file a petition;

c. If the Department is filing a petition, open the case in FACTS to access Court screens;

d. Complete Comprehensive Assessment - within thirty (30) days of opening case;

e. Complete all necessary forms to file a petition;

f. Arrange for all required notifications;

g. Complete all documentation in FACTS;

h. Request legal representation for the Department from either the Legal Counsel for Adult Services or the prosecuting attorney;

i. Submit Initial Assessment to supervisor for approval;

j. Submit petition to supervisor for approval;

k. Arrange for payment of applicable fees;

l. Upon approval of the petition by the supervisor and arrangement for payment of fees, file the petition with the Circuit Clerk;

m. Arrange for witnesses to be present/subpoenaed; and,

n. Arrange for the alleged protected person's presence during the hearing.

Note: The tasks generally are listed in the order in which the worker would complete them however, there may be some that will be completed simultaneously such as in a situation where an emergency situation exists and the petition must be filed immediately, the worker may be working on completion of the Initial Assessment and preparation of the petition at the same time.

5.15.2 During the Hearing

a. Ensure attendance at the hearing of alleged protected person or, provide evidence that the individual refuses to appear;

b. Present case to the court if not represented by counsel;

c. If the Department objects to all or part of an appointment, state the objection during the hearing so it becomes part of the court record; and,

d. If in question, request that the court clarify the parameters of the appointee's authority.

Note: If the Department is not represented by legal counsel and the hearing becomes an adversarial proceeding, the Department should request a continuance in order to arrange for legal representation.

5.15.3 Following the hearing

a. Within fourteen (14) days following the entry of the order of appointment, mail a copy of the order or appointment and statement advising the recipient of their right to appeal to all parties named in the original petition;

b. Review the order of appointment;

c. Prepare petition for modification of the order of appointment, if applicable;

d. Prepare and submit the initial report to the court within six months following the appointment; and,

e. Preparation and submission of the annual report to the court.

5.16 Responsibility of the Supervisor

5.16.1 Prior to the Hearing

a. Review and approve Initial Assessment;

b. Review and approve court petition and other court documents if the Department is filing a petition;

c. Approve case connect in FACTS if a case is to be opened in order to access court screens; and,

d. Review and approve completed Comprehensive Assessment and Service Plan.

5.16.2 Following the Hearing

a. Review the Order of Appointment; and,

b. Ensure submission of Modification of the Order of Appointment, if applicable.

5.17 Responsibility of the Court

5.17.1 Prior to the Hearing

a. Appointment of legal counsel for the alleged protected person; and,

b. Set hearing date.

5.17.2 During the Hearing

a. Determine whether a guardian or conservator should be appointed;

b. Determine the type of guardian or conservator and the specific areas of protection, management and assistance to be granted;

c. Determination whether or not the individual meets the definition as a protected person

d. Consider the suitability of the proposed guardian or conservator, the limitations of the alleged protected person, the development of the person's maximum self- reliance and independence, the availability of less restrictive alternatives including advance directives and the extent to which it is necessary to protect the person from neglect, exploitation, or abuse; and,

e. Select the individual or entity best qualified to act in the best interest of the protected person, after consideration of the proposed guardian's or conservator's geographic location, familial or other relationship with such person, ability to carry out the powers and duties of the office, commitment to promoting such person's welfare, any potential conflicts of interest, the criminal history of the proposed guardian or conservator and the recommendations of the spouse, the parents, children or other interested relatives, whether made by will or otherwise. The court may order a background check to be conducted by the state police or county sheriff on any person being considered by the court for appointment as a guardian or conservator, WV Code §44A-1-8.

5.17.3 Following the Hearing

Issue and enter the Order of Appointment.

Note: The Order of Appointment is to be signed and filed within seven (7) days if the hearing is before the Circuit Judge and within fourteen (14) days if the hearing is before the Mental Hygiene Commissioner.

5.17.4 Different Types of Guardian Appointments

a. Full Guardian

A guardian appointed by the court who has full responsibilities of the personal affairs of a protected person.

b. Limited Guardian

A guardian appointed by the court who has only those responsibilities for the personal affairs of a protected person, as specified in the order of appointment

c. Temporary Guardian

A guardian appointed by the Circuit Court who has only those responsibilities for the personal affairs of a protected person, as specified in the order of appointment. A temporary guardian may be appointed upon finding that an immediate need exists, that adherence to the procedures otherwise set forth in WV Code §44A-2-14 for the appointment of a guardian may result in significant harm to the person

that no other individual or entity appears to have the authority to act on behalf of the person, or that the individual or entity with authority to act is unwilling, unable or has ineffectively or improperly exercised the authority. A temporary guardian is time limited to six (6) months unless terminated or extended by the Circuit Court upon good cause following a hearing.

5.18 Filing for individuals in state operated facilities

WV Code §44A-1-8 states a petition for the appointment of a guardian, a conservator, or both, may be filed by the individual alleged to be a protected person, by a person who is responsible for the individual's care or custody, by the facility providing care to the individual, by the person that the individual has nominated as guardian or conservator, by a person acting as a De facto Guardian or De facto Conservator or by any other interested person, including, but not limited to, the department of health and human resources. The Department is able to file a petition to be appointed as guardian for individuals who are currently patients/residents in state operated facilities. This does not exhibit a conflict of interest situation.

There are two (2) specific situations that the worker must be aware of related to this issue:

1. First, when it is determined that a guardian is needed for an individual currently in a state operated facility to make decisions while they are in the state operated facility; and,

2. Second, when the Department is already the court appointed guardian at the time the individual is admitted to a state operated facility. These two (2) situations are addressed separately in the following sections.

5.18.1 When a Guardian is Needed for an Adult in a State Operated Facility

The Department is able to file a petition to be appointed as guardian for an individual who is currently a patient/resident in either a state operated psychiatric facility or a state operated long term care facility. State operated psychiatric facilities include Sharpe Hospital and Mildred Mitchell Bateman Hospital. State operated long term care facilities include Jackie Withrow Hospital, Hopemont Hospital, Lakin Hospital, John Manchin Sr. Health Care Center and Welch Emergency Hospital. When a substitute decision-maker is needed for an adult in one of these facilities, it is the responsibility of the facility to first locate and arrange for a suitable decision-maker other than the Department. In doing so, the facility is expected to explore all potential individuals and entities that may be able to serve in a decision-making capacity and to document the results of these efforts. The Department also has the responsibility to look at all potential individuals who may be able to serve in a

decision-making capacity for the protected person. If there is no other individual or entity to serve as guardian the Department can serve as guardian. State operated facilities and their employees cannot serve as guardian of the protected person, WV Code §44A-1-8.

5.18.2 When the Department is Guardian for Patient/Resident of a State Operated Facility

When the Department is the court appointed guardian for an individual who is admitted to a state operated facility, the Department's responsibility as guardian does not change upon admission. The Department as the court appointed guardian is still charged with the responsibility of acting in accordance with the known wishes/values of the protected person or, if these are not known, in accordance with his/her best interest.

The worker is to explore suitable alternative individuals/entities to serve as guardian on an ongoing basis in all instances where the Department is the court appointed guardian. This is to be done as part of the review process, and if a suitable alternate guardian is identified, the worker should file a Petition for Termination, Revocation or Modification to have the other party named as guardian.

5.19 Court Requests for Studies of Potential Guardians

It is the responsibility of the court to determine, based on the information presented during the hearing, if there is an appropriate person who is willing and able to serve and if there is more than one potential candidate, to determine the best candidate. In situations where the Department is not the petitioner and has no prior knowledge/involvement of the case, it is not the role of the Department to determine the best candidate. When there is more than one potential candidate and two or more of these individuals are interested in serving, the court may order the Department to complete a study on each potential candidate and make a recommendation as to who would be the best candidate. If the Department is present during a hearing where the Department is ordered by the court to complete a study under these circumstances or any other request that do not coincide with the Departments responsibility, the Department should object during the hearing so the objection is noted in the court record. Immediately following the hearing/notification the Legal Counsel for Adult Services is to be contacted to request assistance. If the Department is not present during a hearing where the Department is ordered by the court to complete a study under these circumstances, the worker should contact their supervisor and then request assistance immediately with the Legal Counsel for Adult Services upon receipt of the court order requiring the Department to conduct the study.

5.20 Decision-Making for the Protected Person

A court appointed guardian is responsible for assisting the protected person with personal decisions. The guardian's decision-making authority officially begins upon

receipt of the signed order of appointment. In reality, there is some variation from one jurisdiction to another in the expectations of the court regarding when the guardian's authority begins WV Code §44A-4-5: The guardian or conservator of a protected person shall terminate upon the death of the protected person: Provided, that in the absence of an advanced directive or pre-need burial or cremation contract, after the death of the protected person, a guardian or a conservator, shall have authority to make decisions regarding the body of the deceased protected person for the purposes of authorizing an autopsy and making funeral arrangements. The guardian's or conservator's authority shall continue until an executor or an administrator has been appointed. This allows the Department as guardian to arrange funeral arrangements, even though guardianship ends at death. Similarly, the authority of the guardian ends upon an order of the court authorizing resignation or removal of the guardian. See Assessment Prior to Closure section for detailed information.

Decision-making by guardian may include all personal decisions, or the order of appointment may limit the duration and/or scope of the guardian's authority. In doing so, the guardian has the ability to act for the protected person and exercise his/her rights. Generally, a guardian is responsible for assisting with decisions regarding the protected person's personal matters. Limitations to the scope of that authority may be set dependent on the needs and capabilities of the protected person. In addition, the protected person should be permitted and encouraged to participate in decision-making on their behalf to the extent possible.

Personal decisions that the guardian may be involved in making include the following (unless these are specifically excluded in the order of appointment):

a. Where the protected person will live/changes in residential setting;

b. Services/treatment required to address needs;

c. Health care to be provided and/or withdrawn;

d. Authorization of placement in a nursing facility or other health care setting appropriate to meet health care needs;

e. Resources needed to meet educational needs, if applicable; and,

f. The protected person's means of support, including applying for benefits on the protected person's behalf when applicable.

g. In addition, there are certain decisions of the guardian that require approval of the court in advance. These include:

h. Decisions resulting in a change in the protected person's marital status;

i. Decisions resulting in a change of the protected person's residence to another state;

j. Decisions resulting in termination of the protected person's parental rights;

k. Deviation from a previously executed living will or medical power of attorney; and,

l. Revocation or amendment of an existing and valid durable power of attorney.

Note: When authorization of the court is required in advance; the adult service worker should advise his/her supervisor immediately and promptly refer the matter to the Legal Counsel for Adult Services for review and assistance.

The guardian **may NOT** make decisions in the following areas:

a. Decisions specifically excluded in the order of appointment;

b. Financial decisions; and,

c. The guardian or conservator of a protected person shall terminate upon the death of the protected person: Provided, that in the absence of an advanced directive or pre-need burial or cremation contract, after the death of the protected person, a guardian or a conservator, shall have authority to make decisions regarding the body of the deceased protected person for the purposes of authorizing an autopsy and making funeral arrangements. The guardian's or conservator's authority shall continue until an executor or an administrator has been appointed WV Code §44A-4-5. Preparation for this should be discussed with the protected person and plans made and documented in advance to ensure that the person's wishes are known and carried out to the extent possible.

If the Department is serving as guardian the worker must ensure that the client is enrolled in a Medicare plan and that all necessary applications/enrollments are made on the client's behalf within thirty (30) days after the client is sixty-four (64) years and nine (9) months of age. This includes enrolling in Medicare Part A and B and/or C and selecting an appropriate plan under Medicare Part D that provides the best coverage for the client's individual medication needs. In addition, the worker must apply for Extra Help through the Social Security Office. Also, an application for QMB, SLIMB and/or QI-1 must be made through Income Maintenance for assistance in payment of the Medicare premium.

QMB, SLIMB and QI-1 are programs offered through Income Maintenance that pay for Medicare premiums. It is extremely important that workers make sure clients apply or someone applies on their behalf for these programs through Income Maintenance. The worker as guardian must ensure that these applications are made on the client's behalf prior to the client reaching age sixty-five (65).

Extra Help is a program that provides financial assistance to individuals with limited income in paying for Medicare Part D. If an individual qualifies, they will receive assistance in paying the premium and co-pays for their prescription drugs. This application must be made through the Social Security Office. The worker as guardian must ensure that these applications are made on the client's behalf prior to the client reaching age sixty-five (65).

If the Department is appointed guardian, the necessary applications/ enrollments outlined above must be made by the worker immediately after being appointed as Guardian. If another individual is appointed guardian, that individual is responsible for making the necessary applications/enrollments.

a. The Department as the appointed guardian is also responsible for attending Multi-Disciplinary Treatment Plans (MDT's), Interdisciplinary Team Meetings (IDT), Individual Program Plans (IPP), Discharge Plan meetings and Care Plans concerning the protected individual. The Department as the guardian must approve and sign off on all decisions, except financial, relating to the protected person. By attending and participating in the scheduled meetings the Department is fulfilling their fiduciary obligation that all services are in the client's best interest.

b. For Title XIX ID/DD Waiver clients it is essential for the Department to attend the Interdisciplinary Team Meetings (IDT) and Individual Program Plans (IPP). The guardian must participate in the (IDT) and/or (IPP) meetings and sign and approve both in order for services to be implemented. There may be extraordinary situations when the Department may have a conflicting crisis situation and may not be able to attend the meeting in person. In these situations the Department may participate by telephone conferencing. This method should only occur for extraordinary situations and should not occur on a regular basis. As guardian the Department can disagree with the Interdisciplinary Team Meeting (IDT) and/or Individual Program Plans (IPP). If the Department disagrees with a portion of the plan they need to mark on the (IDT) and/or (IPP) the section that is in disagreement. The Department as guardian needs to choose either agree or disagree within the fourteen (14) day time-frame to allow the Service Coordinator time to distribute the (IDT) and/or (IPP) to all team members. If another individual is

appointed guardian besides the Department, that individual is responsible for attending and participating in the Multi-Disciplinary Treatment Plans (MDT's), Interdisciplinary Team Meetings (IDT), Individual Program Plans (IPP) and Care Plans.

Note: Though the guardian has decision making authority, there are limits to what a guardian can do. Specifically, appointment of a guardian cannot GUARANTEE that the protected person will be compliant with a recommended course of treatment and/or services. While the guardian does have a responsibility to recommend appropriate services/treatment and living arrangements, and to educate the protected person to the extent possible about the benefits and consequences of compliance/failure to comply, they cannot force the protected person to exercise good judgment, maintain acceptable personal hygiene, take medications as prescribed, etc. Also, as the protected person's legal representative the Department does have access to the protected person's protected health information necessary to carry out their responsibilities as guardian (HIPAA Privacy Rule 45 CFR. I64.502(g)).

5.20.1 Placement Decisions

Unless specifically excluded by the Order of Appointment, the guardian will be involved in making decisions regarding living arrangements/placement on behalf of the protected person. As with all decisions made by the guardian, the known and expressed wishes and values of the protected person are to be considered when making these decisions. Due to physical and/or mental incapacities, some clients may be unable to reside in their own home, even with provision of a variety of supportive services. When this is the situation, the Adult Service worker must evaluate the client's circumstances, needs, supports, family relationships, proximity to the adult's home community and available resources to assist in identifying and facilitating the most appropriate, least restrictive placement alternative. Options to consider include the following:

a. Placement with a relative, friend, or other interested party (with or without supportive services);

b. Adult Family Care (see AFC Policy for detailed information);

c. Specialized Family Care Home (Medley);

d. ID/DD Waiver program;

e. Adult Group Home (serves mentally ill via community behavioral health centers);

f. Residential Board and Care facility; (see RB&C Policy for detailed information);

g. Personal Care Home; (see PCH Policy for detailed information);

h. ICF/ID Group Home;

i. Nursing Home; and,

j. Rental Housing.

The guardian is to be an active participant in determining the most appropriate placement option for the client and authorizing placement, but it is not solely the guardian's responsibility to find the placement setting. However, it is appropriate for the guardian to assist with finding and determining an appropriate placement setting and ultimately authorizing the placement. The Department as guardian is not to authorize placement in a setting that is not certified or licensed by the Department (licensed by the Office of Health Facilities Licensure and Certification). If the protected person already resides in this type of placement setting, whether the individual is permitted to remain in this setting will be dependent of several factors including:

a. The extent to which the placement setting and the provider adequately meets the adults needs;

b. Duration in this setting;

c. Relationship of the protected person with the provider/caregiver; and,

d. Expressed desire of the adult to remain in the setting.

If the client's needs are adequately met, disruption of the placement is anticipated to have a negative impacted on the protected person, and the arrangement's continuation is desired by both the protected person and the provider, consideration should be given to permitting the adult to remain if doing so would be in their best interest.

In addition to assisting with decisions regarding the type of placement setting that is most appropriate, the guardian may also assist with applying for benefits to fund housing/placement needs (i.e. HUD Housing, Medicaid - for nursing home payment, admission forms for placement in long-term care setting, Medicaid Waiver, hospital admission, etc.). When the Department as guardian signs these types of documents, the Adult Service worker must document in writing beside their signature that the Department's signature DOES NOT imply or guarantee payment by the Department.

Note: Whenever the Department becomes aware of an unregistered residential provider that is operating, the worker is to advise the provider that they are required

to register with the Office of Health Facility Licensure and Certification (OHFLAC) if they have not already done so. The worker must also send written notification to OHFLAC of the existence of the home.

5.20.2 Medical Decisions

Unless specifically excluded by the Order of Appointment, the guardian will be involved in making medical and health care related decisions on behalf of the protected person.

As with all decisions made by the guardian, the known and expressed wishes and values of the protected person are to be considered when making these decisions. In addition, if the protected person has one or more Advance Directives, such as a DNR, Living Will, or other documents that express the protected person's personal wishes, medical decisions of the guardian will be guided by these documents to the extent possible. If the guardian believes it is not possible to do so, approval of the court to deviate from the provisions in the applicable directive must be obtained in advance. Examples of medical decisions that the guardian may be called upon to make, include decisions regarding the following. This is not intended to be an all-inclusive list:

a. Routine medical care;

b. Emergency medical care;

c. Life prolonging measures;

d. Admission to/discharge from medical treatment facility (NH, ICF/ID, hospital, substance abuse treatment facility, etc.);

e. Behavioral health services;

f. Therapeutic treatment;

g. Home health services; and,

h. Hospice care.

Some medical decisions can be very difficult to make, particularly when the protected person is unable to communicate their wishes and their wishes/values are not known by the guardian. Examples might include amputation of a limb, placement of an artificial feeding devise, placement on/removal from a ventilator, exploratory surgery, etc. In these instances, an Ethics Consult may be necessary. Many times the health care facility providing treatment will have an internal Ethics Committee to assist with these decisions. If an internal Ethics Committee is not available, or if the worker is not comfortable with the recommendation of the

facility's internal committee, an Ethics Consultation may be requested by contacting the Office of Social Services, Adult Services Consultant. See Ethics Consultation for detailed information.

Note: Whenever the Department is the legal guardian, completion of the POST Form to document the existence of advance directives, medical decision-makers, etc. is to be encouraged. In addition, as the protected person's legal representative the Department does have access to the protected person's protected health information necessary to carry out their responsibilities as guardian (HIPAA Privacy Rule 45 CFR. I64.502(g)).

5.20.3 End-of-Life Decisions

Unless specifically excluded by the Order of Appointment, the guardian may be involved in making decisions on behalf of the protected person regarding end-of-life care. As with all decisions made by the guardian, the known and expressed wishes and values of the protected person are to be considered when making these decisions. In addition, if the protected person has one or more Advance Directives, such as a DNR, Living Will, or Medical Power of Attorney, end-of-life decisions of the guardian will be guided by these documents to the extent possible.

Decisions that the guardian may be called upon to make include the following:

a. Palliative care/comfort measures (pain management, etc.);

b. Use/removal of life support;

c. Funeral arrangements; and,

d. Organ/tissue/body donation.

Any deviation from an existing Living Will or Medical Power of Attorney or to revoke or amend a Durable Power of Attorney must be authorized, in advance, by the court. End-of-life decisions can be very difficult to make, particularly when the protected person is unable to communicate their wishes and their wishes/values are not known by the guardian. Examples might include amputation of a limb, placement of an artificial feeding devise, placement on/removal from a ventilator, exploratory surgery, etc. In these instances an Ethics Consult may be necessary. Many times the health care facility providing treatment will have an internal Ethics Committee to assist with these decisions. If an internal Ethics Committee is not available, or if the worker is not comfortable with the recommendation of the facility's internal committee, an Ethics Consultation may be requested by contacting the Bureau for Children and Families, Adult Services Consultant. See Ethics Consultation for detailed information. The guardian or conservator of a protected person shall terminate upon the death of the protected person, provided, that in the absence of an Advanced Directive or pre-need burial or cremation

contract, after the death of the protected person, a guardian or a conservator, shall have authority to make decisions regarding the body of the deceased protected person for the purposes of authorizing an autopsy and making funeral arrangements. The guardian's or conservator's authority shall continue until an executor or an administrator has been appointed WV Code §44A-4-5. Therefore, it is essential that the worker discuss funeral arrangements and preferences with the protected person, their family (when applicable), care providers (i.e. Adult Family Care Providers, Specialized Care Provider), funeral homes and the conservator (if applicable) in advance and facilitate the pre-need burial arrangement if possible. The Department as guardian is not responsible for payment of the individual's burial costs. The Indigent Burial program through Income Maintenance may be utilized, but the funeral director or family member must make the application. The Department is to follow if known the clients wishes for their burial procedure, if not known the Department can approve a traditional burial and/or cremation as last resort.

Organ Donation is an end-of-life decision that can be written in an Advanced Directive (i.e. Living Will), indicated on an individual's driver's license, through the Center for Organ Recovery and Education or simply made known by the individuals expressed wishes. It is essential that the worker discusses organ, tissue, and/or body donation with the client and family prior to the client becoming deceased. It is recommended that the worker make every attempt to obtain the clients wishes in writing. If the Department is guardian, the Adult Service worker will need to gain approval from the supervisor for an organ donation and then make an official request through the court for permission to proceed. An Ethics Consult can always be requested if there are any questions that arise from family and/or interested parties concerning this decision. If the wishes of the protected person are not known regarding organ, tissue, or body donation, donation will not be authorized by the Department.

There are hospitals in designated regions that serve the Center for Organ Recovery and Education (CORE) as a referral site for potential donors. You may contact CORE at 1- 800-DONORS-7. This is a twenty-four (24) hour a day service.

5.20.4 Do Not Resuscitate (DNR) Order

A Do Not Resuscitate order (DNR) is a physician's order, issued by a licensed physician authorized to practice in the state of West Virginia. The order specifically states that cardiopulmonary resuscitation should not be administered to a certain person. The requirements related to issuing a do not resuscitate order are contained in WV Code §16-30C.

In situations where the Department has been legally appointed to act as guardian for the protected person, or has been appointed to serve as Health Care Surrogate, the decision of whether to sign a DNR should not be taken lightly. The decision to

sign a DNR must be made on a case by case basis. Careful consideration should be given to the guardian's/Health Care Surrogate's knowledge of the client and their expressed wishes. In no instance is the Department to routinely sign DNR orders.

When a DNR is being considered or has been requested by the attending physician, the Adult Service worker must consult the medical professional(s) to gather applicable information about the client's medical/physical condition, prognosis for improvement, impact of health condition on quality of life, etc. Approval must be granted by the supervisor prior to a DNR being signed by the Adult Service worker. Whenever the decision of whether or not to sign a DNR is in question, the Adult Service worker is strongly encouraged to consult with the Ethics Committee in the facility where the adult resides if applicable and/or the Ethics Committee of the Bureau for Children and Families. The Bureau for Children and Families Committee assists in resolving ethical problems in client care through the use of a Multi-Disciplinary Ethics Consultation Service (ECS) which is a sub-committee of the Ethics Committee.

In certain instances, only one physician is required to do a DNR. These are:

a. When the individual has capacity and authorizes their attending physician to do a DNR; and,

b. When the individual is incapacitated but has a legal representative or health care decision-maker who authorizes the attending physician to do a DNR.

The opinion of a second physician is required when:

a. The individual is incapacitated and there is no representative or health care decision maker available; and,

b. The patient is a minor child under the age of sixteen (16).

5.20.5 Relationship Decisions

Unless specifically excluded by the Order of Appointment, the guardian may be involved in making decisions regarding the interpersonal relationships between the protected person and others. These may be some of the most difficult decisions that a guardian is called upon to make. As with all decisions made by the guardian, decisions are to give consideration to the known and expressed wishes and values of the protected person as well as their best interest. It is essential that decisions be guided by these factors rather than the personal beliefs and values of the worker. It is important also to facilitate development and maintenance of interpersonal and family relationships unless it is detrimental to the protected

person to do so. Decisions that the guardian may be called upon to make include decisions regarding the following (this list is not intended to be all inclusive):

a. Visitation with family/friends;

b. Intimate relationships;

c. Protection from victimization and exploitation by others; and,

d. Protection from abuse or neglect by others;

There are certain changes related to the protected person's interpersonal relationships that require approval of the court in advance. These include:

a. Change in the protected person's marital status; and,

b. Termination of the protected person's parental rights.

Note: Though the guardian has decision making authority, there are limits to what a guardian can do. Specifically, appointment of a guardian cannot **GUARANTEE** that the protected person will be compliant. While the guardian does have a responsibility to recommend appropriate services/treatment and living arrangements, and to educate the protected person to the extent possible about the benefits and consequences of compliance/failure to comply, they cannot force the protected person to exercise good judgment, maintain acceptable personal hygiene, take medications as prescribed, etc.

Note: When authorization of the court is required in advance; the adult service worker should advise his/her supervisor immediately and promptly refer the matter to the Legal Counsel for Adult Services for review and assistance.

5.20.6 Financial Decisions

The financial situation of the protected person can directly impact decisions made by the guardian, however, the guardian is not authorized to make financial decisions. Because the protected person's financial situation is inter-related with the ability to meet their needs, it is essential that the guardian work closely with the financial representative, whether a conservator, payee, trustee, etc., as decisions are being made. The guardian may assist in ensuring the availability of adequate financial resources by applying for benefits on behalf of the protected person, seeking the appointment of a Representative Payee (when applicable), and petitioning for appointment of a conservator (when applicable). Whenever a goal on the protected person's Service Plan will require expenditure of funds, the goal must be approved by conservator/payee, etc. as applicable.

Occasionally the Circuit Court will appoint the Department to serve as conservator for a protected person or will include responsibilities in a guardianship appointment that relate to handling financial matters. Both of these situations are inconsistent with state statute. If the Department has been appointed conservator, the appointment must be contested during the hearing, or if the Department is not party to the hearing, immediately upon receipt of notification of the appointment. Similarly, if the Department has been appointed guardian but specific responsibilities enumerated in the order of appointment include making financial decisions, the inclusion of financial decisions must be contested immediately upon receipt of notification of the appointment. To initiate this process, the worker is to contact the Legal Counsel for Adult Services to initiate filing of a Petition for Termination, Revocation or Modification of the appointment of Conservator or Guardian. This type of petition is available as a DDE and may be accessed through the reports area in FACTS.

Note: Guardians or conservators may make application for benefits (SSA/SSI, Medicaid application and reviews, Veterans Benefits, Medicaid Waiver services, etc.) but cannot administer any financial resources.

*If the Department is serving as Health Care Surrogate and if there is no other entity or interested person to complete the Medicaid or Medicare application for the client, the Adult Service worker as Health Care Surrogate may complete the application upon the approval of their supervisor as last resort. The Department as Health Care Surrogate **may not** make any other application for benefits (SSA/SSI, Veterans Benefits, Medicaid Waiver services, etc).

5.20.7 Supportive Service Decisions

Unless specifically excluded by the Order of Appointment, the guardian will be involved in making decisions related to social and supportive services on behalf of the protected person. As with all decisions made by the guardian, the known and expressed wishes and values of the protected person as well as their capabilities, strengths and limitations are to be considered when making these decisions.

Decisions that the guardian may be called upon to make include decisions regarding the following:

a. Transportation-if this is an identified service need the guardian should assist with arranging for appropriate transportation services. The guardian is not required to transport the protected person;

b. Recreational services;.

c. Education/training services;

d. Employment services;

e. Rehabilitation/habilitation services; and,

f. Application for benefits (SSA/SSI, Medicaid, Veterans Benefits, Medicaid Waiver services, etc.).

5.20.8 Ethics Consultation

Making decisions for another person can be very demanding and difficult. The responsibility for making these decisions becomes more difficult when the guardian does not have benefit of personal knowledge of the protected person and the protected person is no longer able to communicate their personal preferences. Most difficult of all, are those decisions related to dramatic life changing, medical procedures, and end-of- life care. Examples might include amputation of a limb, placement of an artificial feeding devise, placement on/removal from a ventilator, exploratory surgery, etc. In these instances an ethics consult may be necessary to aid the guardian in making these decisions. Many times the health care facility providing treatment will have an internal ethics committee to assist with these decisions. If an internal ethics committee is not available, or if the worker is not comfortable with the recommendation of the facility's internal committee, an ethics consultation may be requested by contacting the Bureau for Children and Families, Adult Services Consultant.

The worker is encouraged to seek an Ethics Consultation when:

a. The protected person who has some degree of decision-making capacity will not agree to follow the course of action recommended by the guardian and other professional (as applicable) and by not doing so may cause significant harm to him/herself or others;

b. An impasse has been reached by local professionals on an ethical problem concerning the protected person;

c. A non-guardian, close relative or other interested party with a legitimate interest in the protected person disagrees with a significant decision to be made by the worker;

d. A decision must be made which is very unusual, unprecedented, or very complex ethically; or,

e. A decision needs to be made about whether or not to withhold or withdraw life- sustaining medical treatment for a client who totally lacks capacity and whose wishes and values are not well enough known to predict what the client would choose.

An Ethics Consultation may be initiated by the worker in consultation with the supervisor. Requests for consultation should be made by contacting the Adult Services Consultants serving the region where the incapacitated adult resides. It

should be noted that decisions of the Ethics Committee are recommendations. The final decision rests with the Department as guardian. The Ethics Committee is made up of the following entities: Social Service Supervisor, Social Service Worker, Adult Service Consultants, State Adult Service Policy Unit, Regional Program Manager of the requesting region, and/or the Director for the Center for Health & Ethics of Law at West Virginia University 1-877-209-8086. Legal Counsel for Adult Services can be consulted if their counsel is needed.

5.20.9 Consultation Protocol

a. The worker will complete the Ethics Consultation Intake Tool and submit it to the Adult Services Consultant. This completed form may be faxed if necessary. (The Adult Services Consultant will notify other members (at least one) of the Ethics Consultation Service group that a consultation has been requested and provide them, by fax if necessary, the information provided by the worker making the request;

b. If possible, the Consultant will arrange a conference call in order to discuss the consultation request. The worker making the request, as well as any other relevant local individuals, should participate in this call. If it is not possible to arrange a conference call, then;

c. The Consultant will discuss the consultation request with the members of the Ethics Consultation Service group and record their responses. More than one call to each member may be necessary. The resulting recommendation will be provided to the worker requesting the consultation; and,

d. The Consultant will prepare an Ethics Consultation Summary documenting the consultation request and summarizing the consensus of the Ethics Consultation Service group members. To the extent possible, confidentiality shall be maintained.

5.20.10 Foster Care Youth turning 18

There may be times when a youth in Foster Care will need to be transitioned to the Adult Services system. This determination will be made based on the results of a thorough Life Skills Assessment of the youth while a foster child. A Life Skills Assessment is a Comprehensive Assessment, designed to engage the young people in their transitions to adulthood, as they move from childhood into their teenage years. The assessment assists in determining life skills domains, deemed critical by youth and caregivers to assist youth transitioning to adulthood successfully. Specifically, before it is decided that a youth will need to be transitioned to the Adult Services system, the Foster Care worker is to ensure that the following is completed:

a. Assures that each youth in a Foster Care placement completes the Life Skills Assessment and any needed Supplemental Assessments, no later than thirty (30) days following his or her fourteenth (14) birthday or within thirty (30) days of entering Foster Care if the youth has already reached the age of fourteen (14) years of age or older.

b. The youth's worker must ensure that the Foster Care agency staff or foster/adoptive parents perform the annual re-assessment of the Life Skills Assessment until the youth is discharged from Foster Care.

c. Use of the Life Skills Assessment curriculum to continuously evaluate and measure progress and readiness in the areas of functional capabilities and mastery of core life skills areas.

If a youth is not progressing through the Life Skills Assessment curriculum or the Special Needs curriculum, a comprehensive psychological evaluation, including an assessment of the youth's potential for independence when they reach adulthood, is to be obtained by the Foster Care worker.

At the point the determination is made, based on all of the identified assessment instruments, that self-sufficiency is not an appropriate goal for the youth and that transitioning to the Adult Services system is the likely goal, the Foster Care worker must begin planning for this transition. When the youth reaches age seventeen (17) the Foster Care worker must contact the local Adult Services staff to initiate their involvement in the case. The Adult Services worker must consult with their supervisor who will determine the appropriate action. Participation of the Adult Services staff at this point will be informal with the Foster Care worker retaining responsibility for the case. The role of the Adult Services staff at this point will be limited to the following, for the purpose of meeting the youth and becoming familiar with their circumstances, needs and personal preferences:

a. Attendance at the youth's multi-disciplinary treatment team meetings;

b. Participation in scheduled case staffing; and,

c. Participation in the case review process.

Once the youth reaches age seventeen (17) years, six (6) months, and if the plan continues to include transitioning to Adult Services and the Adult Services worker has an active role in implementing the youth's Service Plan, the Adult Services worker may become a secondary worker on the Foster Care case. From this point on, the Foster Care worker and the Adult Services worker should work jointly in planning for the youth's entry into adulthood and exit from Foster Care. Until the youth is discharged from Foster Care, the Foster Care worker will retain responsibility for the case. See the Foster Care policy, Transition to Adult Care for detailed information.

When it is determined that a guardian and/or conservator will need to be appointed for a youth who is transitioning from Foster Care into Adult Services, the Adult Services worker is to complete a Guardianship Intake when the youth reaches age seventeen (17) years, ten (10) months. The Guardianship Intake/case is to be separate from the Foster Care case. However, the Guardianship case and Foster Care cases should be associated in FACTS to show the relationship between the two and to maintain access to necessary information contained in the Foster Care case.

Opening the Guardianship case will involve completion of an Intake, completion of the Initial Assessment and completion of Case Connect in FACTS. Once these are completed, the worker will have access to the Court screens and may initiate the petition process to request that a guardian and/or conservator be appointed. The petition may be filed sixty (60) days prior to the youth's eighteenth (18th) birthday. It may not be filed prior to this time. See Filing a Guardianship Petition for detailed information about the petitioning process.

Note: The general rule in Foster Care and Juvenile Service is that children and adults cannot be placed together in the same facility. There are exceptions to this rule. Children transitioning to Adult Services can be placed in an ICF/ID or other similar placement type facilities even though the facility may not already be entered into FACTS. The Department should always place clients where and whoever is in their best interest. The Payment and Vender Maintenance Department at the State office (304)558-0997 has the responsibility of entering the provider into FACTS in these situations. The Payment Vender and Maintenance Department has the ability to enter the non-paid providers into FACTS that are not licensed by child welfare such as the ICF/ID facilities. Certain information has to be received prior to the Payment Vender and Maintenance Department can enter the information. The Adult Service worker needs to complete a W-9 concerning the provider and then attach it to The FACTS Provider form. The FACTS Provider form along with the W-9 then needs to be mailed to the state office Payment Vender and Maintenance Department.

5.21 Compensation for a Court Appointed Guardian

State statute provides for reasonable compensation to guardians and conservators for performing their duties. Statute does not specify what constitutes "reasonable compensation" but most parties who seek compensation request payment for their services at a rate of 5% of the protected person's monthly assets. In order for a guardian or conservator to receive compensation, the court must authorize the amount and frequency of compensation to be paid in advance. Compensation, if authorized, will be paid from the protected person's estate and may include reimbursement of costs advanced, including costs associated with filing the petition for appointment of the guardian/conservator. The Department will not seek compensation for carrying out our responsibilities as guardian.

In addition to compensation paid to guardians and conservators, attorneys appointed to represent the protected person in a guardianship proceeding will

receive reasonable compensation for their services. If the protected person has sufficient resources, the court may approve payment of attorney's fees from the estate. If the protected person does not have sufficient resources to cover this cost, the attorney will be paid at a rate established by the West Virginia Supreme Court of Appeals from funds allocated for this purpose. In the later instance the attorney must submit an invoice to the West Virginia Supreme Court of Appeals requesting payment.

5.22 In State/out of State

5.22.1 Guardian Appointed in a State Other than West Virginia

When a protected person becomes a resident of West Virginia and the guardian resides in another state, the existing guardian may continue to serve. To do so, they must petition the Circuit Court in the county where the protected person resides. If the existing guardian wishes to transfer guardianship to West Virginia, they should file a petition for the appointment of a new guardian. See WV Code §44A-1-12 of the West Virginia Code. Generally, the Department will not be involved in these situations unless the Department is being appointed guardian or the out of state guardian requests information from the Department about filing the petition in West Virginia.

5.22.2 Protected Person Moves Out of State

Before a protected person may transfer out of state, the worker must seek prior approval of the court. When it is suggested to move Protected Person out of State; the adult service worker should advise his/her supervisor immediately and promptly refer the matter to the Legal Counsel for Adult Services for review and assistance.

In preparation for a transfer to another state and filing of the petition, the worker must contact the appropriate agency in the receiving state to determine the appropriate process for appointment of a new guardian. The Department should request that the receiving state become the guardian, decision maker and/or fiduciary for the protected individual. If the receiving state accepts guardianship appointment of the protected individual the Department should not retain guardianship for the protected individual who no longer resides in West Virginia. In circumstances in which the receiving state declines to become guardian, decision maker and/or fiduciary for the protected individual the Department may retain guardianship of the protected individual, however the Department will continue to seek other possible potential decision makers. Should the Department determine to place the protected individual out of state that determination should be of last resort and only after all other placement resources have been exhausted. A payment resource must also be secured prior to the protective individual being placed out of state and a policy exception must be requested and approved before any out of state placement occurs. When the protected individual is placed out of state and the Department retains decision making authority all case practices and policy must continue to be followed.

SECTION 6

Case Review

6.1 Introduction

Evaluation and monitoring of the Guardianship case and the progress being made should be a dynamic process and ongoing throughout the life of the case. Frequent monitoring is essential in order to ensure that the client's needs are adequately met and to make alternate arrangements in a timely manner as appropriate.

6.2 Purpose

The purpose of case review is to first evaluate the client's functioning, needs, and capabilities and second, to consider and evaluate progress made toward goals and objectives set forth in the Service Plan. The Adult Service worker must consider issues such as progress made, problems/barriers encountered, effectiveness and continued appropriateness of the current plan in addressing the identified problem areas, and whether or not modifications/changes are indicated including whether or not a guardian continues to be needed. An informal review is to be completed at each face-to-face contact with the client and a formalized review completed at six (6) month intervals.

6.3 Time Frames

When a Guardianship case is first opened, maintaining frequent contact with the protected person is essential in order to establish a relationship between the worker and the protected person as well as to provide an opportunity for the worker to monitor the protected person's functioning and assess for additional needs. In order to do so effectively, the worker is to have frequent face-to-face contact with the protected person.

6.3.1 Protected Person Resides in Community

For individuals living in a community setting, face-to-face contact should be made at least once weekly during the first month. Thereafter, the worker must have face-to-face contact with the protected person at least once monthly. This is the minimum standard. Workers are strongly encouraged to have more frequent contact. These contacts are to be documented in FACTS as soon as possible of the contact. Documentation is to be pertinent and relevant to carrying out the activities set forth in the Service Plan.

6.3.2 Protected Person Resides in a Supervised Placement

For individuals living in a supervised placement setting, face-to-face contact should be made at least once during the first month. Thereafter, the worker must have face-to-face contact with the protected person at least every ninety (90) days. These contacts are to be documented in FACTS as soon as possible of completion

of the contact. Documentation is to be pertinent and relevant to carrying out the activities set forth in the Service Plan. This is the minimum standard. Workers are strongly encouraged to have more frequent contact.

Whenever there is both an open Guardianship case and Adult Residential Services case, efforts should be made by the workers to coordinate visits with the client whenever possible.

Supervised settings include:

a. Adult Family Care;

b. Assisted Living (RB&C, PCH, etc.);

c. Nursing Home;

d. ICF/ID Group Home;

e. ID/DD Waiver Home;

f. Specialized Family Care Homes (Medley); and,

g. Others.

Formalized Case Review must occur at six (6) months following opening of the Guardianship case and again at six (6) months intervals thereafter until case closure at a minimum. The worker should review the case record prior to contact with client. The Service Plan and other applicable parts of the case record are to be updated as part of each six (6) month review process and between reviews if circumstances warrant. Any time there is a significant change in the client's circumstances, these are to be documented. This documentation is to include any changes necessary in the Service Plan and any modifications to the Comprehensive Assessment, as applicable.

Note: Information documented in FACTS as part of the six (6) month review will be used to create the Periodic Report to the Court which is available as a DDE. Therefore, it is advisable to schedule reviews to coincide with submission of this report.

6.4 Conducting the Review

A formal review of the Guardianship case must be completed at least six (6) months following case opening and again at six (6) month intervals thereafter until case closure. The review process consists of evaluating progress toward the goals identified in the current Service Plan. This requires the Adult Service worker to review the Service Plan and have a face-to-face contact with the client and

caregiver/provider, if applicable. Follow-up with other individuals and agencies involved in implementing the Service Plan, such as service providers, must also be completed.

During the review process, the Adult Service worker is to determine the following:

a. Client's current functioning and whether or not there has been improvement or a decline in functioning since the previous review;

b. Extent of progress made toward goal achievement;

c. Services/intervention provided during the review period and the effectiveness of each;

d. Whether or not the identified goals continue to be appropriate and, if not, what changes and/or modifications are needed;

e. Barriers to achieving the identified goals;

f. Recommendations to the court regarding services, continued need for a guardian, suggested changes, etc.; and,

g. Other relevant factors.

Since this information will be used to create the Periodic Report to the Court, thorough and complete documentation is essential.

6.5 Documentation of Review

At the conclusion of the review process the Adult Service worker must document the findings in FACTS. This includes summarizing the client's circumstances and progress, reviewing the Service Plan in FACTS and end dating any goals that have been achieved or are to be discontinued or modified for some other reason(s). Goals that have not been end dated on the Service Plan must be continued on the new Service Plan and additional goals may be added as appropriate.

In addition, when there have been changes in the following areas, and the annual Comprehensive Assessment is not yet due, the updated information must be documented as a modification to the Comprehensive Assessment:

a. Caregiver status;

b. Client decision-making capacity;

c. Client financial management capability;

d. Client environment/household;

e. Client behavioral functioning; and,

f. Client ability to meet ADL's.

When the review process is completed, the Adult Service worker must submit the new Service Plan and Summary Evaluation and, if applicable, the modified Comprehensive Assessment to the supervisor for approval. Once approved, the Adult Service worker must print a copy of the revised Service Plan and secure all required signatures. Finally, they must provide a copy of the Service Plan to the client and to all signatories. The original signed Service Plan is to be filed in the client's case record (paper file) and recorded in Document Tracking.

6.6 Assessment Prior to Case Closure

A Guardianship case in which the Department is the appointed guardian cannot be closed until the court issues an order terminating this appointment or, if the protected person is deceased, upon petition by the Department requesting termination. A final evaluation must be completed as part of the case review process prior to closure of the case.

Upon completion of the final review, the Adult Service worker must document the results of this review in FACTS and submit to the supervisor for approval of recommendation for case closure. The final report to the court must also be prepared and submitted to the court prior to closure of the Guardianship case. Upon supervisory approval and following submission of the final report to the court, the case is to be closed for Adult Guardianship Services.

If the case is being closed due to the client being deceased, the Adult Service worker is required to attach a copy of the client's death certificate along with the final evaluation report Petition for Termination, Revocation or Modification of Appointment to the Circuit Clerk's office. The death certificate can be obtained through the State Registrar of Vital Statistics (304)558-8016. The death certificate can also be obtained from the funeral home or other entity that may be handling arrangements of the deceased body. Generally funeral homes do not charge a fee for providing a death certificate. If the Department is charged a fee, the Adult Service worker will obtain payment for this service through the local Financial Clerk. Reimbursement to the local DHHR office for this payment is accomplished via a Demand Payment in FACTS. The case must not be closed until the Demand Payment in FACTS has been generated. See Other Demand Payments for further details.

Note: It is essential that all documentation in the case is completed prior to closure of the case.

6.7 Payment by the Bureau for Children and Families

6.7.1 Fees Associated with Filing a Petition

The Bureau for Children and Families pays for certain limited expenses associated with petitioning the court for appointment of a guardian. When the

Department is the petitioner, the following fees may be required and are to be submitted along with the petition when filed:

a. Filing fee (established by statute);

b. Fees associated with service of process (varies from one jurisdiction to another);

c. Fees for certified mail for required notification of parties; and,

d. Filing fees.

6.7.2 Process for Filing Fees

The following process is to be used for the filing fee and costs associated with filing the petition:

a. Worker requests a DF-67 (transmittal form) from the local Financial Clerk;

b. Worker completes DF-67 and submits to the supervisor for approval;

c. Submit completed, approved DF-67 to the Circuit Clerk and obtain Circuit Clerk's signature on DF-67 and an invoice;

d. Return signed documents to the local Financial Clerk who will cut the check;

e. Attach the check to the petition and other required documents and file with the Circuit Clerk;

f. Upon filing the petition, worker will obtain itemized receipt for fees paid; and,

g. Complete a Demand Payment in FACTS for applicable fees, payable to the local general assistance account, to reimburse this account for funds expended.

This is the established procedure to ensure reimbursement to the local general assistance account. There may be some variation to this procedure from one district to another. The worker or Financial Clerk may enter the Demand Payment

request. These payments need to be completed within six (6) months of the petitions filing date.

6.7.3 Other Demand Payments

There are certain other limited costs that may be paid when necessary and not

covered by any other source. These are not routine costs associated with the petitioning process but may be paid in rare instances and only when they are required and not covered by another source. These will be paid as a Demand Payment and will require approval of both the supervisor and the Bureau for Children and Families (two-tier). Payments in this group are only available to Guardianship cases and include:

a. Expert testimony;

b. Medical evaluation (annual physical, psychological and/or psychiatric evaluations);

c. Court reporter fee;

d. Copies of court transcripts/documents;

e. Transportation;

f. Interpreter; and,

g. Birth/death certificates.

These types of Demand Payments are to be entered as a regular Adult Services Demand Payment. The request must include a clear explanation about why the payment is necessary, efforts to explore other funding sources, and other relevant information to justify the request. The worker must have the provider entered in the Service Log of the Guardianship case for payment to be made. The request must then be submitted to the supervisor for approval. Once supervisory approval is granted, the request will be forwarded by FACTS to the Adult Services Unit in Bureau for Children and Families for the final approval. In addition, these payments need to be completed within six (6) months. Before payment is made for an interpreter, court reporter and/or any other payments all other resources must be exhausted prior to Department making payment. **The Department is to only pay the Medicaid rate.**

Culturally competent practice is ensured by recognizing, respecting and responding to the culturally defined needs of individuals that we serve. If someone is in need of an interpreter, the worker must contact local resources to locate an interpreter. Examples include, but are not limited to, the Board of Education, local colleges and Division of Rehabilitation. If a local community resource cannot be located, the

worker will seek other resources such as the Department of Justice Immigration and Naturalization Service at (304)347-5766, 210 Kanawha Boulevard, West, Charleston, WV 25302. If an interpreter is used, confidentiality must be discussed with this individual, reminding them that all information is confidential and must not be shared with anyone.

There are certain payment types that guardianship clients are not eligible for. These include:

a. Clothing allowance payments, unless they are placed in an adult residential placement setting for which the Department is making a supplemental payment. See Adult Residential Services policy for detailed information; and,

b. Special medical authorizations.

In addition, the Department is not responsible for payment of legal fees for the court appointed counsel to the protected person in guardianship proceedings. This payment, by statute, is the responsibility of the state Supreme Court.

6.8 Transfer of Cases between Counties

There may be situations where a Guardianship case must be transferred from one county to another. When it is necessary to transfer a Guardianship case from one county to another, this is to be a planned effort with close coordination between the sending county and the receiving county.

Note: Guardianship case is not to be transferred if the placement is a temporary arrangement (substance abuse treatment, inpatient psychiatric care, acute care hospital admission, etc.). In these instances the originating county is to continue to carry the case. If there are times when it is a hardship for the county responsible for the case to maintain contact with the protected person as required, the supervisor may arrange with the Adult Services supervisor in the county where the facility is located to do a courtesy visit.

6.8.1 Timing of Transfers

It is recommended that case transfers be planned for the beginning or end of a month in order to minimize confusion related to payment, if applicable.

6.8.2 Sending County Responsibilities

When it is necessary to transfer Guardianship case from one county to another, the sending county is responsible for completing the following tasks:

a. Prior to arranging or actually completing a transfer to a provider in another county, the sending supervisor must contact the supervisor in the receiving county to notify them that a client is being transferred to

their county (if placement in the receiving county will be in an AFC, or an Assisted Living Residence an Adult Residential Services case should be opened with a secondary case type of Guardianship and carried by the receiving county.

b. Provide a summary about the client's needs (i.e. reason for the transfer, problems in other settings, disturbing behaviors, family and financial resources, insurance coverage, and legal representative(s), if applicable);

c. Complete all applicable case documentation prior to case transfer;

d. Immediately upon transfer of the client to the receiving county, send the updated client record (paper and FACTS) to the receiving county; and,

e. Notify the DHHR Family Support staff, the Social Security Administration office, and all other appropriate agencies of the client's change of address.

6.8.3 Receiving County Responsibilities

The receiving county is responsible for completing the following tasks in preparation for the transfer:

a. Notify the DHHR Family Support staff of the client's arrival when the transfer is complete;

b. Complete all applicable documentation; and,

c. Assist with arranging or initiating any needed community resources.

When a Guardianship case is transferred from one county to another, problems that arise during the first thirty (30) day period following the transfer are to be addressed jointly between the counties. When this occurs, the receiving county may request assistance from the sending county. If such a request is received, the sending county is to work cooperatively with the receiving county to resolve the problem(s). The adult service worker should maintain frequent contact during this initial adjustment period to ensure a smooth transition. This will permit timely resolution of problems that may occur during this time.

6.8.4 Court Requirements and Legal responsibilities - Change of Venue

Change or transfer of venue is a legal process whereby the court with jurisdiction over a guardianship proceeding may transfer jurisdiction of the proceeding to a court in another county or state pursuant to WV Code §44A-1-7. A guardian and/or conservator shall continue to file their respective reports and/or accountings to the court that has jurisdiction over the proceeding.

Note: If a transfer of venue is to be considered the worker and his/her supervisor should consult with the Adult Welfare Consultant and Legal Counsel for Adult Services for assistance in assessing the need/criteria for transferring venue and drafting/filing the petition for transfer of venue to another county or state.

6.9 Legal Processes

There are various legal remedies that may be appropriate for use in Guardianship cases. These are summarized in the following sections and primarily related to seeking necessary changes in the Guardianship appointment. Detailed information is contained in the policy titled Legal Processes and Requirements - Adult Services.

6.10 Confidentiality

6.10.1 Confidential Nature of Adult Services Records

Legal provisions concerning confidentiality have been established on both the state and federal levels. In federal law, provisions are contained in the Social Security Act and the Health Insurance Portability and Accountability Act of 1996 (HIPAA). On the state level, provisions pertaining to confidentiality for Guardianship cases are contained in WV Code §44A-2-5 and WVDHHR Common Chapters, Chapter 200. Specifically, requirements in WV Code §44A-2-5 relate to confidentiality of the legal proceedings and the WVDHHR Common Chapters, Chapter 200 addresses confidentiality of the case record of the Department.

6.10.2 When Confidential Information May be Released

All records of the Bureau for Children and Families concerning an Adult Guardianship Services client shall be kept confidential and may not be released, except as follows:

a. Certain information may be released to the protected person or their documented legal representative. When releasing information to these parties, information that may NOT be included would be information and documents provided by another entity such as medical reports, psychological reports, information from Social Security Administration, etc.

In addition, prior to release of case information the worker and supervisor must review the record to determine if any of the information contained therein would be detrimental to the protected person. If so, this information is to also be excluded from the information provided for review. In the event the request appears to be unreasonable or questionable, supervisor/worker is to contact the Council for Adult Services prior to release of any information;

b. Upon written request, information about intellectually disabled adults may be shared with the federally recognized protection and advocacy entity within West Virginia (West Virginia Advocates or West Virginia EMS Technical Services Network). This request must state the specific information being requested and the reason(s) for the request. The recipient of this information must agree to keep all information shared confidential. (Sharing information does not apply to all advocacy groups - long-term care ombudsman, patient rights advocates, etc. It is limited to ONLY the federally recognized protection and advocacy entity);

6.10.3 Sharing Information with the West Virginia Advocates

Conditions that apply when considering whether or not information may be shared with West Virginia Advocates are as follows:

a. WVA does have authority under federal law to investigate allegations of abuse/neglect involving individuals with intellectual disabilities if the incident is reported to WVA or if there is probable cause to believe that the incidence occurred;

b. WVA shall have access to all records within three (3) days for 1) any individual with an intellectually disabled who is a client of WVA if they or their legal representative has authorized WVA to have access, 2) any individual with an intellectually disabled adult in a situation where the individual a) is unable to authorize WVA to have access, b) does not have a legal representative or the Department is Guardian and c) a complaint has been received by WVA or WVA has probable cause to believe the individual has been subject to abuse/neglect;

c. When a request for access to the record is made based on probable cause, the basis for probable cause should be made known to the Department prior to access of the record;

d. WVA shall have immediate access (within twenty-four (24) hours of request) without consent to the records of the developmentally disabled individuals who meet the above criteria if WVA determines there is probable cause to believe the health and safety of the individual is in serious and immediate jeopardy or in the case of death of the individual; and,

e. If the entire record is requested, relevant case information may be copied (with the exception of the reporter's identity) and a reasonable charge may be assessed by the local DHHR to cover the time and cost involved in the duplication and mailing of the material.

6.10.4 When Information is Released to the Courts

In some instances courts will seek information for use in their proceedings. See

Subpoenas, Subpoena duces tecum & Court Orders below for detailed information. For reporting and statistical purposes, non-identifying information may be released for the preparation of non-client specific reports; and, The Order of Appointment may be presented, as appropriate, to provide verification of the Department's legal relationship to the protected person, and the scope of authority granted by the court (i.e. physician/medical treatment facilities, Veterans Administration, etc.).

6.11 Subpoenas, Subpoena duces tecum & Court Orders

The Department may be requested by the court or other parties to provide certain information regarding Guardianship cases.

The various mechanisms that may be used are:

a. Subpoena;

b. Subpoena duces tecum; and,

c. Court order.

Upon receipt of any of these, the Department MUST respond. Failure to comply is contempt of court and could result in penalties.

A subpoena commands a witness to appear to give testimony while a subpoena duces tecum commands a witness, who has in his/her possession document(s) that are relevant to a pending controversy, to produce the document(s) at trial. Subpoenas may be court ordered or administrative (ordered by a party other than the court). Though all subpoenas must be responded to, the manner in which this response occurs is somewhat different dependent on who issues the subpoena.

6.11.1 Court Ordered Subpoenas

These include subpoenas issued by the Circuit Court, the Magistrate Court or the Mental Hygiene Commissioner. There may be times when a questionable court order or a subpoena requesting that confidential information be provided is received. In this event, the Adult Service worker must advise his/her supervisor immediately and promptly refer the matter to the appropriate Legal Counsel for Adult Services for review and possible legal action, including filing a motion to quash. In the event there is not sufficient time for the Legal Counsel for Adult Services to become involved in the situation, prior to the scheduled hearing, the Department should request a continuance until such time as legal representation can be arranged. If a continuance is not granted, the Department should comply with the subpoena or court order.

6.11.2 Administrative Subpoenas

These include subpoenas issued by an attorney or Administrative Law Judge (other than a DHHR Administrative Law Judge). These subpoenas generally request that the Adult Service worker appear to provide testimony and/or produce

the case record. The Adult Service worker should advise his/her supervisor immediately and promptly refer the matter to the Legal Counsel for Adult Services for review and possible legal action, including filing a motion to quash.

6.12 Liability

Guardians have a fiduciary duty to the protected person. A fiduciary duty means that a special relationship of trust, confidence, or responsibility exists. When the

Department is appointed to serve as guardian, this duty legally obligates the Department to act in the best interest of the protected person. An appointed guardian who fails to fulfill their fiduciary duty may be held personally liable for a breach of that duty, including being required to pay restitution for any embezzled or concealed funds. The guardian IS NO liable for the acts of the protected person, unless the guardian is personally negligent in carrying out their duties.

6.13 Conflict of Interest

To avoid any conflict of interest and ensuring optimal client services, the Adult Service worker must inform their supervisor immediately upon discovering that a friend, relative, or former co-worker, and anyone with close ties to the worker has been assigned to him/her for investigation or as an ongoing case. Upon this disclosure the supervisor has the discretion to transfer the case to another worker (and in some instances to another county) and restrict the case for limited access. The supervisor will then be responsible for informing their Social Service Coordinator and/or Community Service Manager of this issue. In addition, Adult Service workers should not solicit or accept any monetary gain for their services to the client other than their salary and benefits paid by the Department.

SECTION 7

Case Closure

7.1 Case Closure - General

A Guardianship case in which the Department is the appointed guardian cannot be closed until the court issues an order terminating this appointment or, if the protected person is deceased, upon petition by the Department requesting termination. A final evaluation must be completed as part of the case review process prior to closure of the case. See Assessment Prior to Case Closure for detailed information.

7.1.1 Notification of Case Closure

If the case is closed for guardianship services for any reason other than client death, written notification to the client or his/her legal representative is required. Notification is to be sent within five (5) working days of the date services were terminated. A form letter titled "Notification Regarding Application for Social Services" Negative Action Letter (SS-13) is to be used for this purpose. This form is available in the Reports area of FACTS. See Reports in FACTS for additional information.

7.1.2 Client's Right to Appeal

A client or his/her legal representative has the right to appeal a decision by the Department at any time for any reason. To request an appeal, the client or his/her legal representative must complete the bottom portion of the "Notification Regarding Application for Social Services" and submit this to the worker's supervisor within thirty (30) days following the date the action was taken by the Department. The supervisor is to schedule a pre-hearing conference to consider the issues. If the client or his/her legal representative is dissatisfied with the decision rendered by the supervisor, the hearing request and all related information is to be forwarded by the supervisor to the hearings officer for further review and consideration. See Common Chapters for specific information regarding grievance procedures.

Note: The Department as the legal representative may not appeal a decision by another office/bureau within the Department. However, other parties, such as family members and/or advocates, may appeal the decision on the client's behalf

SECTION 8

Other

8.1 Initial Assessment

The Initial Assessment is completed in the Intake/Assessment phase of the casework process. This form is available as a DDE in FACTS and may be accessed through the Report area. It may be opened as a Word document, populated with information that has been entered in FACTS. The Adult Service worker then has the ability to make modifications, as appropriate, before printing the document. The completed document must then be saved to the FACTS file cabinet for the case. Finally, creation of this form must be documented in the Document Tracking area of FACTS.

8.2 Comprehensive Assessment

The Comprehensive Assessment is completed in the Assessment phase of the Guardianship casework process. It is a compilation of elements from several areas of the system and is available as a DDE in FACTS, accessible through the Report area. This report may be opened as a Word document, populated with information that has been entered in FACTS. The Adult Service worker then has the ability to make modifications, as appropriate, before printing the document. The completed document must then be saved to the FACTS file cabinet for the case. Finally, creation of this form must be documented in the Document Tracking area of FACTS.

8.3 Service Plan

The Service Plan is completed in the Case Management phase of the Guardianship casework process. This form is available as a DDE in FACTS and may be accessed through the Report area. It may be opened as a Word document, populated with information that has been entered in FACTS. The Adult Service worker then has the ability to make modifications, as appropriate, before printing the document. Creation of this form must be documented in the Document Tracking area of FACTS. The completed document must then be saved to the FACTS file cabinet for the case. Finally, after printing the Service Plan the worker must secure all required signatures, provide the client and all signatories with a copy, file the original signed document in the client case record (paper record), and record in Document Tracking where the original signed document is located.

8.4 Petition for Appointment of Conservator/Guardian

The Petition for Appointment of a Conservator/Guardian is completed in the Case Management phase of the Guardianship casework process. This form is available as a DDE in FACTS and may be accessed through the Report area. It may be opened as a Word document, populated with information that has been entered in FACTS. The Adult Service worker then has the ability to make modifications, as appropriate, before printing the document. The completed document must then be

saved to the FACTS file cabinet for the case. Finally, creation of this form must be documented in the Document Tracking area of FACTS.

8.5 Motion for Leave to File Guardianship Petition without Evaluation Report

The Motion for Leave to File Guardianship Petition without Evaluation Report is completed in the Case Management phase of the Guardianship casework process. This form is available as a DDE in FACTS and may be accessed through the Report area. It may be opened as a Word document, populated with information that has been entered in FACTS. The Adult Service worker then has the ability to make modifications, as appropriate, before printing the document. The completed document must then be saved to the FACTS file cabinet for the case. Finally, creation of this form must be documented in the Document Tracking area of FACTS.

8.6 Evaluation Report of Licensed Physician/Psychologist

The Evaluation Report of the Licensed Physician/Psychologist is completed in the Case Management phase of the Guardianship casework process. This form is available as a DDE in FACTS and may be accessed through the Report area. It may be opened as a Word document, populated with information that has been entered in FACTS. The Adult Service worker then has the ability to make modifications, as appropriate, before printing the document. The completed document must then be saved to the FACTS file cabinet for the case. Finally, creation of this form must be documented in the Document Tracking area of FACTS.

8.7 Affidavit of Physician (Certifying Protected Person Cannot Attend Hearing)

The Affidavit of Physician is completed in the Case Management phase of the Guardianship casework process. This form is available as a DDE in FACTS and may be accessed through the Report area. It may be opened as a Word document, populated with information that has been entered in FACTS. The Adult Service worker then has the ability to make modifications, as appropriate, before printing the document. The completed document must then be saved to the FACTS file cabinet for the case. Finally, creation of this form must be documented in the Document Tracking area of FACTS.

8.8 Petition for Permission to Resign as Conservator/Guardian

The Petition for Permission to Resign as Conservator/Guardian is completed in the Case Management phase of the Guardianship casework process. This form is available as a DDE in FACTS and may be accessed through the Report area. It may be opened as a Word document, populated with information that has been entered in FACTS. The Adult Service worker then has the ability to make modifications, as appropriate, before printing the document. The completed document must then be saved to the FACTS file cabinet for the case. Finally, creation of this form must be documented in the Document Tracking area of FACTS.

8.9 Petition for Removal of Conservator/Guardian

The Petition for Removal of Conservator/Guardian is completed in the Case Management phase of the Guardianship casework process. This form is available as a DDE in FACTS and may be accessed through the Report area. It may be opened as a Word document, populated with information that has been entered in FACTS. The Adult Service worker then has the ability to make modifications, as appropriate, before printing the document. The completed document must then be saved to the FACTS file cabinet for the case. Finally, creation of this form must be documented in the Document Tracking area of FACTS.

8.10 Petition for Termination, Revocation or Modification of Appointment

The Petition for Termination, Revocation, or Modification of Appointment is completed in the Case Management phase of the Guardianship casework process. This form is available as a DDE in FACTS and may be accessed through the Report area. It may be opened as a Word document, populated with information that has been entered in FACTS. The Adult Service worker then has the ability to make modifications, as appropriate, before printing the document. The completed document must then be saved to the FACTS file cabinet for the case. Finally, creation of this form must be documented in the Document Tracking area of FACTS.

8.11 Statement of Financial Resources

The Statement of Financial Resources is completed in the Case Management phase of the Guardianship casework process. This form is available as a DDE in FACTS and may be accessed through the Report area. It may be opened as a Word document, populated with information that has been entered in FACTS. The Adult Service worker then has the ability to make modifications, as appropriate, before printing the document. The completed document must then be saved to the FACTS file cabinet for the case. Finally, creation of this form must be documented in the Document Tracking area of FACTS.

8.12 Periodic Report of Guardian

The Periodic Report of Guardian is completed in the Case Management phase of the Guardianship casework process. This form is available as a DDE in FACTS and may be accessed through the Report area. It may be opened as a Word document, populated with information that has been entered in FACTS. The Adult Service worker then has the ability to make modifications, as appropriate, before printing the document. The completed document must then be saved to the FACTS file cabinet for the case. Finally, creation of this form must be documented in the Document Tracking area of FACTS.

8.13 Intake Summary

The Intake Summary is available as an on-line report based on information entered in the Intake/Assessment phase of the case. It may be accessed through the Report area.

8.14 Ethics Consultation Intake Tool

The Ethics Consultation Intake Tool is the form to be used by the worker whenever an Ethics Consultation is being requested. The worker is to complete this form and submit it to the Adult Services Consultants in the Bureau of Children and Adult Services. The completed form may be faxed if necessary.

8.15 Ethics Consultation Summary

The Ethics Consultation Summary form is to be completed by the Adult Services Consultants to document the consultation request. It also is used to summarize the consensus of the other committee members consulted on the case. When complete, the Summary will be retained on file in the Office of Social Services.

8.16 Negative Action Letter (SS-13)

Anytime a negative action is taken in a Guardianship case such as a reduction in services provided by the Department, the client or their legal representative must be provided with written notification of the action being taken. The action must be clearly and specifically stated, advising the client/legal representative of the action being taken and the reason(s) for the action. In addition to notification of the action being taken, the client or their legal representative must be made aware of their right to appeal the decision and advised of what they must do to request an appeal. This form, titled “Notification Regarding Application for Social Services”, is available in the Reports area of FACTS.