

Handbook for Guardians of Adults

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INTRODUCTION

You have been appointed by the court as guardian for another individual. Whether you are a relative or a volunteer, this is an important job. There is potential for invaluable contribution to the welfare of the individual and personal satisfaction for you.

Being a guardian is not a simple role, but one demanding responsibility, patience, compassion and sensitivity. There are a number of duties you owe to the person you have agreed to assist. There are also duties you owe to the court.

Historically, guardianship developed as an exercise of *parens patriae* - the state as protector of its citizens. Under Michigan's guardianship reform law, the court must balance that goal with values of personal independence and self-determination. Under the law, guardianship should only be imposed when there is no alternative.

Since the abilities and disabilities of each person differ, when guardianship is appropriate the powers of the guardian should be tailored to the needs of the individual.

In any guardianship, there are certain powers you have as guardian, and certain rights kept by the individual. It is important to be familiar with your powers, and to respect and advocate for the individual's rights. You should also recognize the impact of guardianship upon an individual's outlook, and try to minimize negative effects.

To help you in your new and challenging role, we have prepared this guide to answer questions you may have. Most of the information is based on state law and court rules. When an issue is not addressed by these sources, we have tried to establish good policy within the spirit of the law. To avoid labels, we refer to a person for whom a guardian has been appointed as an "individual."

An important topic of this book is the powers you have as guardian. Realize even if you have legal authority, there may be practical problems you encounter in exercising that authority. For example, although you may have power to consent to medical treatment, it may be difficult to convince the individual to go to the doctor.

This handbook focuses on guardianships for adults under the Estates and Protected Individuals Code. If an adult suffers from a developmental disability, somewhat different provisions of the Mental Health Code apply.

The book includes certain court forms used in guardianship proceedings and makes reference to others. Each type of court form has a number, such as PC 625, found at the bottom left-hand corner. Not every form is used in every case. Blank forms should be available from the probate court office.

If questions arise - about your duties, an individual's rights, or resources available in the community - for which you cannot find an answer, please call upon the court.

1. APPOINTMENT

What is a guardian?

A guardian is a person appointed by a probate court and given power and responsibility to make certain decisions about the care of another individual.

What initial steps are followed in guardianship proceedings?

1. Petition filed in probate court by person interested in individual's welfare
2. Petitioner notifies individual, in person
3. Petitioner notifies interested parties, such as family members, by mail
4. Court may order examination by mental health professional
5. Court appoints *guardian ad litem*

PC 625 Petition for Appointment of Guardian

PC 626 Notice to Individual of Rights

How much is the filing fee?

The fee is \$150.00. If an emergency petition is brought, the fee is \$170.00. The court can waive this fee if the petitioner cannot afford it. If the petitioner pays the fee, he or she can be reimbursed from funds of the individual if a guardianship is established.

How does the process differ in emergencies?

In an emergency, interested parties need not receive notice. The individual still receives notice and a hearing is held. If an emergency petition is granted, the court appoints a *temporary guardian*. A second hearing with notice to all interested parties must occur within 28 days.

What is an emergency?

An emergency is a crisis from the perspective of the individual, for instance, when a health care decision must be made in a life and death situation. It is not an emergency when a hospital wishes to transfer an individual to a nursing home.

Upon whom may a court impose a guardianship?

The individual must be a *legally incapacitated individual* and imposition of guardianship must be necessary to provide for the individual's care.

What is a legally incapacitated individual?

A legally incapacitated individual is an adult who -

is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause ... to the extent of lacking sufficient understanding or capacity to make or communicate informed decisions.

What is the role of the guardian ad litem?

- Visiting the individual who is subject of the petition
- Explaining to the individual the nature of guardianship and the individual's rights in the process

- Determining whether the individual wishes to be present at the hearing or contest the proceedings in any way
- Reporting back to the court whether the individual wishes to contest the proceedings and if not, whether he or she needs a guardian.

Does the guardian ad litem have any power to make decisions for the individual?

No. Although there is often confusion over his or her role, a guardian ad litem does not have authority to make decisions for the individual.

When does the role of guardian ad litem end?

The responsibilities of the guardian ad litem usually end upon his or her report to the court at the hearing.

What happens upon the guardian ad litem reporting to the court?

1. Court appoints attorney to represent individual, if appropriate
2. Hearing at courthouse or other convenient location
3. Court issues order appointing guardian or dismisses petition
4. If guardian appointed, guardian files *acceptance of appointment* with court
5. Court issues *letters of guardianship* to guardian

PC 631 Order Appointing Guardian

What is an *acceptance of appointment*?

An acceptance of appointment is a document you sign when appointed by the court, in which you agree to serve as guardian and perform the required duties.

PC 571 Acceptance of Appointment

What are *letters of guardianship*?

Letters of guardianship serve as proof of your authority to act, and set forth any limits to your power. You should have received a certified copy of the letters of guardianship from the court. Read it carefully; it will note any limitations on your powers, and set forth your reporting duties to the court.

If the letters of guardianship conflict with any of the information in this handbook, follow the letters of guardianship.

PC 633 Letters of Guardianship

When would I use letters of guardianship?

For example, if you set up a bank account, the bank will need a copy of your letters. If you are to make a medical treatment decision, the doctor or hospital will likely want to see a copy.

For most purposes, showing an agency or person the certified copy, then giving them a photocopy for their files, will be sufficient.

What if I need more certified copies than the one I have received?

Additional certified copies of letters of guardianship are available from the probate court at a cost of \$10.00 per copy, a cost payable from the resources of the individual.

Do I have access to the court file?

Yes. You may review the file at any time the probate court office is open.

It is a good idea to keep a copy of all forms you file with the court, and a copy of other important papers in the file.

2. POWERS AND DUTIES

A. In General

Do all guardians have the same powers?

No. The court should only grant a guardian powers over those areas in which an individual cannot make informed decisions. Any guardian upon whom the court grants fewer than all powers of a guardian is a *limited guardian*.

For example, a person who is appointed to make only medical care decisions for an individual is a limited guardian. The individual would retain the power to act independently in all other areas.

In general, what are the duties of a guardian?

The law states a guardian is responsible for the individual's "care, custody, and control."

More specifically, what are a guardian's powers and duties?

Unless limited by the court order, a guardian has the responsibility to -

- Determine where the individual lives
- Make provision for his or her care and comfort, including food, clothing and shelter
- Obtain services to achieve the best possible state of well-being
- Return the individual to self-management, if and when possible
- Authorize or refuse medical treatment
- Take care of clothing, furniture, vehicles and other belongings

- If a *conservator* is not appointed, receive money due the individual and use it for his or her needs.

What is a conservator?

A conservator is a person or financial institution appointed by the probate court to handle an individual's property and financial affairs. Sometimes the same person serves as both guardian and conservator.

Once appointed, a conservator takes title to and manages the individual's assets.

In exercising powers, should I as guardian consider the wishes of the individual?

Yes. A guardian should be guided by the known wishes, likes and preferences of an individual, whether expressed before the guardianship was established or currently.

If an individual can understand a decision is to be made, a guardian should confer with him or her before acting. Whenever possible, the individual should be presented with choices. These are important aspects of independence and dignity.

Are the duties of a full guardian unlimited?

No.

What are some powers a guardian does not have?

- Unless also appointed conservator by the court, authority to sell property such as stocks or real estate
- Commit an individual to a psychiatric hospital without a separate commitment hearing, unless the individual *assents*

- Cast the individual's ballot in an election
- Determine his or her religious preference
- Write a will for the individual
- Physically punish him or her

What rights does an individual retain under full guardianship?

The law is not clear on this matter. But unless specifically restricted by the probate court, an individual probably retains the right to attend worship services of his or her choice, to receive and send mail unopened, to use the telephone, to receive visitors, to maintain membership in civic organizations.

Does the individual retain the right to make a will, or change an existing will?

If the individual is generally aware of his or her property, his or her close relatives, and that the document is a will, he or she has the capacity to sign a will. The will must reflect the individual's wishes for distribution of the property and be signed voluntarily. A will signed while an individual is under guardianship might be later challenged on the basis of lack of capacity or undue influence.

A conservator, but not a guardian, has the right to read an existing will.

Can the individual vote in local, state and federal elections?

Yes. Although permitted to by the Michigan Constitution, the legislature has not passed a law excluding persons from voting because of mental incompetence.

A guardian or another person may read and explain the ballot to the individual, but may not vote for the individual.

Anyone may transport the individual to the polls. Or the individual may vote by absentee ballot if he or she is physically unable to attend the polls; or is at least 60 years old; or will be away from home during election day.

Can the individual still drive an automobile?

The Michigan Secretary of State has the right upon notice and re-examination to suspend or revoke the driver's license of an individual who is not competent to drive a motor vehicle due to mental disability.

As guardian, you may contact the Secretary of State.

Do I have a responsibility to inform the individual of my role as guardian and of his or her rights?

Yes. You should attempt to do this as soon as possible.

What if the individual's residence changes?

If the individual moves, whether by his or her choice, or by yours, you have an important obligation to inform the court within 14 days of the move. You may use the form on the next page if you wish.

You also have an obligation if you move to inform the court of your new address.

NOTICE OF CHANGE OF RESIDENCE

B. Financial Matters

To what extent do I have control over the individual's finances?

If a conservator is not appointed, as a full guardian you control the monthly income of the individual and the money in his or her bank account.

In controlling money, what are my obligations?

You owe the individual what is known as a *fiduciary duty*, one of care, confidence and trust. You must be careful.

You must not intermingle the individual's money with your own. You cannot use the money for your own needs, including a loan. You should not buy anything from or sell anything to, the individual without prior court approval.

If ordered by the court, you must account to the court for all money received and all money spent each year.

What are my priorities in using the money?

1. First, pay for present needs of the individual
2. If there are sufficient funds to pay for present needs, satisfy past debts
3. Conserve excess funds for future needs

What if I am unsure a past bill is valid?

Do not pay a bill if you question its validity.

Might the court authorize the individual to handle part of his or her money or other property?

Yes. To encourage self-reliance and independence, the court may put this in its order. The court may or may not specify an amount.

Can I give individual control of some of her or his money if the court order is silent on the issue?

Yes. You should do this if at all possible. You might maintain a separate checking or savings account in the individual's name alone, or give the individual amounts of cash to spend as he or she wishes.

If I give cash to the individual, do I need a receipt?

No. It is demeaning to request a receipt from someone receiving his or her own money. Do keep a record of the cash outlays.

Should I discuss financial matters with the individual?

Yes, if possible. A person who no longer has control of his or her money may feel others are stealing or otherwise misusing it. You should try to allay those fears.

Can I make large gifts to relatives of the individual?

No. Nor do you have authority to change the beneficiary of a life insurance policy on the individual or to sign a federal or state tax return.

What should I do upon being appointed guardian?

If there is no conservator appointed, set up a bank account.

How should I choose a bank?

If the individual does not presently have a bank, consider convenience, interest rates, services charges, and reputation for service.

What information will the bank need?

The bank will want to see, and perhaps keep, a certified copy of your letters of authority. The bank will need proof of your identity, such as a driver's license, and the social security number of the individual.

What type of account should I set up?

You will likely want a checking account, or both a checking and a savings account. Use the individual's social security number. Do not create a joint account. The account name should read,

Individual's Name by: Guardian's Name
GUARDIAN

Once the account is established, what do I do?

Transfer money from existing accounts of the individual to the guardianship account. Maintain a separate account if the individual is going to control part of his or her money.

What will happen to Social Security checks that were directly deposited into the previous account?

Monthly Social Security or Supplemental Security Income (SSI) checks could continue to go directly to the bank, deposited into the guardianship account. Notify Social Security of the change in account number; the bank may have the necessary form.

What if existing accounts are joint between the individual and another person?

Request a determination by the probate court what part of the money belongs to the individual.

Should I pay bills and other expenses by check or in cash?

Use the new checking account to pay for purchases and bills. The monthly statement and cancelled checks the bank sends to you provide a convenient record of income and expenses. If you do pay cash, make sure you keep a receipt.

Should I notify utility companies to send bills directly to my address?

It may be helpful to have utility and tax bills come directly to you.

Should I keep additional financial records?

Yes. It is best to keep a log showing the date and amount of all income received, and the date, amount, and purpose of all expenses, particularly those paid in cash. At the end of each month, total the expenses in categories, such as-

- food
- clothing
- shelter, including utility bills
- health and dental care
- insurance, e.g., health, life, homeowners
- other

Keep all bills, receipts, income statements and insurance reimbursement records, and store them separately from your own papers.

How long do I need to keep old records?

Keep records for at least three years.

What if the individual has always received Social Security checks at home?

If the individual receives either Social Security or SSI checks at home, apply at the nearest Social Security office to become *representative payee*. Bring a copy of the petition for guardianship and your letters of guardianship.

What will happen if I am appointed representative payee?

Upon your appointment, the monthly checks will come directly to you, or you can arrange for *direct deposit* into the guardianship account.

For those funds, you will have to file an *annual account* with the Social Security Administration.

What if the individual receives Veterans Benefits?

Through the Veterans Administration, a person can become *custodian* of pension or disability funds of an individual. A VA field representative visits to determine whether you are appropriate to be custodian. The representative conducts periodic reviews of your performance, eliciting information about how money was spent, your visits, and any medical treatment the individual received.

You must inform the VA if the individual goes into a VA hospital.

Is there an initial record I should make?

Yes. It is a good idea to compile a "face sheet" with important information you will need in the future. The face sheet can be the first page of a diary, as shown later in this handbook.

It is also a wise to make a list of all personal property for which you are responsible.

After becoming guardian, what if I find the assets are valuable enough to require investment management?

You should petition the probate court for appointment of a conservator.

PC 639 Petition for Appointment of a Conservator

Is it necessary for the court to appoint a conservator if only a single transaction is required?

No. Upon petition, the court, itself, can authorize any financial transaction it finds to be in the best interest of the individual. For example, the court could authorize the sale of stock to pay for an individual's continued nursing home stay. The court's action is known as a *protective order*.

PC 639 Petition for Protective Order

How are my responsibilities as guardian different when the court also appoints a conservator?

If a conservator is appointed, you would inform the conservator about the cost of housing, health, food and services needs of the individual. The conservator might pay these expenses directly or give you sufficient money to cover them. In the latter case, you would provide receipts to the conservator for funds spent.

If you continue to receive income of the individual directly, turn over to the conservator any amount in excess of that required to meet current expenses of the individual.

It is the conservator's responsibility to file an inventory and to file annual accounts with the court.

What if the conservator will not cooperate with me?

It remains the responsibility of the guardian to see the individual's daily needs are met. If there are differences of opinion between you and the conservator that cannot be resolved, contact the probate court. A guardian can compel a conservator to pay for support of the individual.

C. Services and Benefits

What should I do upon being appointed guardian?

Visit the individual and try to explain your function. Ask the individual what you can do to help him or her. Observe living conditions. Talk with staff. Determine what you must do to meet the immediate needs of the individual - for clothing, food, shelter and health care.

May I seek a professional assessment of the individual's physical, mental health and social needs?

Yes.

Whom would I contact to conduct an assessment?

Contact your county aging or community mental health agency for resources available in your community.

Need all services be provided by an outside professional?

No. For example, the individual might desire special books or tapes from the public library. You could perform this task. But generally it isn't your responsibility to provide services, but to arrange for services available in the community.

What types of professional services might the individual need?

- Health and dental care
- Personal care, including feeding, bathing, dressing
- Housing, including housekeeping, maintenance and repair
- Nutrition, including home delivered meals and food stamps
- Recreation
- Education
- Day care
- Transportation

How do I know what services are available in the community?

There may be a published resource directory for the community, or an informational and referral service. For older adults, contact your county department of aging or area agency on aging.

Are services available at no cost?

Some services are available for free. Others are offered on a donation basis or a sliding fee scale. Still others are straight fee for service.

May I purchase services from an individual or business, as well as from a non-profit agency?

Yes.

If you employ an individual to perform household work, make sure you comply with requirements for paying the worker's social security taxes.

Do I have power to arrange in advance for funeral and burial?

Yes. If the individual has not already made arrangements, try and determine his or her wishes. If you pay in advance, make sure the cost of the arrangements will not disqualify the individual for any public benefit programs he or she may need.

Am I responsible for using my own money to pay for services for the individual?

No.

However, when you are appointed guardian, the individual may not be receiving all financial benefits to which he or she is entitled. It is part of your responsibility to seek out such assistance.

May I sign an application for benefits on behalf of the individual?

Yes.

What are some retirement programs for which the individual may be eligible?

- Social Security
- Supplementary Security Income (SSI)
- Veterans Administration
- Railroad Retirement
- Pension from public or private employer

What are some disability programs for which the individual may be eligible?

- Social Security
- Supplementary Security Income
- Veterans Administration
- Workers Compensation
- Black Lung

What do I have to find out about each program?

1. What benefits are available?
2. What are the eligibility criteria - age, income, assets, work record?
3. Where does one apply?
4. What information/proof is required?

How do I get this information?

There are a number of free pamphlets available; some are listed in the resources chapter of this handbook. If the individual is low income or age 60 or older, you might receive guidance from the local free legal services program.

Are there ways I can help an individual become eligible?

There may be. For instance, if an individual's assets exceed the program maximum, you could spend the excess on needs such as a wheelchair ramp or prepaid funeral.

Beware of rules prohibiting *divestment*, giving away assets or selling them for less than their value.

Are there other ways of helping the individual become eligible?

Yes. For example, if an individual has assets, is under age 65, and meets the federal definition of a disabled person, you can set up what is known as a *special needs trust* or *OBRA trust*. The money put in trust is then not considered an asset for eligibility purposes.

An OBRA trust can be established through the probate court using a protective order.

Where do I apply for programs?

Apply to the local Social Security office for Social Security benefits, SSI and Medicare. Apply to the county office of the Family Independence Agency for Medicaid and food stamps. Call the Veterans Administration Office for VA benefits.

Once the individual is receiving a benefit, what is my responsibility?

A number of programs, such as SSI and Medicaid, have asset limits; if the individual exceeds these limits, he or she becomes ineligible. By effectively

managing finances through paying for current needs or wants of the individual, or by establishing an OBRA trust, you can often maintain his or her eligibility.

What are my duties to the agency providing the benefit?

Depending on the program, you may have an obligation to keep the agency informed of changes in the individual's address, living situation, income, and value of assets.

D. Place of residence

What should I do upon being appointed guardian?

If the individual is living at home, it is likely her or his strong wish to remain there. You should explore what financial programs and services are available to effect this goal.

What are some financial programs available?

- Homestead and home heating tax credits - current and back years
- Deferrals of special assessments
- Hardship reduction in tax assessment
- Emergency needs, e.g., for furnace replacement
- Reverse equity mortgages
- Homesharing

What types of services might be available to allow the individual to remain in her or his home?

- Chore services, including heavy cleaning and yard work
- Home repair, weatherization and remodeling
- Homemaker, including housekeeping, meal preparation, and shopping
- Home delivered meals
- Personal care

- Home health care, hospice care
- Telephone reassurance and friendly visitor
- Respite care

Aside from securing appropriate benefits and services, what should I do?

Make sure the individual's homeowners insurance policy remains paid up. If there is an outstanding mortgage, make the monthly payments. Check to ensure the locks on doors and latches on windows are secure.

Do I have authority to refinance the mortgage or apply for a reverse equity mortgage?

A conservator, but not a guardian, has that authority with court approval. You could, however, petition the court for a protective order to accomplish those goals.

What if I feel the individual can no longer safely remain in his or her home?

Discuss the situation with the individual, if possible. Lay out choices available. You might want to broach this subject before the need arises; there may be waiting lists for certain housing alternatives.

What housing options might be available?

- Apartment in private building
- Congregate housing
- Life care facility
- Adult foster care
- Home for the aged
- Nursing home

With whom could I consult about the appropriateness of options?

You might speak with staff at a local aging organization, an adult services worker at the Family Independence Agency, a hospital discharge worker, or an employee of Community Mental Health.

Although a number of people can provide advice, the decision is yours.

Might subsidized apartments be available?

Yes. There may be government subsidies available. Under these programs, the individual pays a set percentage of her or his income as rent.

What is adult foster care?

Adult foster care is a type of residence offering room, board, supervision and sometimes personal care, for a monthly fee.

Are there different types of adult foster care homes?

Yes. There are family homes, small group homes, large group homes and congregate homes. The difference depends on the number of adults living in the home, and whether the owner of the home lives there.

What should I do upon a change in the individual's residence?

It is important you notify the court. It is your duty to do this within 14 days of the move.

If the individual needs nursing home care, how do I choose a home?

You may want to start by getting a list of nursing homes in your county or area. Contact the local department on aging.

Do all nursing homes provide the same services?

No. Some homes only provide *basic care*, while others offer both basic care and *skilled care*.

What is the difference between basic care and skilled care?

Basic care is for individuals who need assistance with daily life activities, such as dressing, bathing and eating.

Skilled care can only be provided by, or under the supervision of, doctors and licensed nurses. It may include administration of drugs, diagnostic tests and rehabilitative services.

How do I decide upon a home?

First, check which homes have available beds. Consider the proximity to the individual's friends and family. Next visit one or more homes to get an impression of the cleanliness, ambiance, activities and quality of care. Ask yourself if this is a place where you would feel comfortable living.

If a home has beds available, must it accept an applicant?

No. Unfortunately, nursing homes can refuse to admit an applicant currently eligible for Medicaid. And although the practice may not be legal, some nursing homes request proof an individual has sufficient assets to remain a private pay patient for a period of time.

Under federal law, a nursing home cannot require an individual or a "responsible party" to agree to pay the private pay rate for a specific period of time before applying for Medicaid. Such agreements are known as *duration of stay contracts*.

A home *participating* in the Medicaid program is not permitted to evict a present resident if she or he becomes eligible for Medicaid.

May I sign the nursing home admissions agreement on behalf of the individual?

Yes. But be careful. Read the admissions contract thoroughly. On the signature line, cross out any reference to "responsible party" and sign only as "guardian."

You should add a statement to the contract, "I sign as guardian and I only agree to pay any nursing home expenses from the individual's funds, not from my own funds."

Does signing the admissions agreement as guardian obligate me to pay anything out of my own pocket?

No, not if you make clear on the contract you are signing only as guardian.

What rights does an individual in a nursing home have?

Both federal and state law provide a long list of rights of nursing home patients. These include the right to-

- Dignity, and safety from harm
- Appropriate care
- Information on one's condition and treatment
- Freedom from unnecessary restraints
- Privacy in communication
- Notice of room or roommate changes
- Complain, without fear of retaliation

What is my role as guardian?

As guardian, you can exercise some of the individual's rights. You have an obligation to see other rights are not violated. To help accomplish these goals, it is useful to visit the individual often and to advocate with staff.

May I rely on the nursing home to see the individual's needs are met?

No. You have an important role to monitor the quality of care and scope of services the individual is receiving. And it is your decision, not the nursing home's, whether the individual remains a resident at the home.

Are there other resources to help in selecting and monitoring nursing home care?

Yes. Citizens for Better Care, a statewide advocacy agency, has an excellent book and a number of pamphlets on long term care issues. A toll free telephone number for CBC is listed in the Resources chapter.

What should I do before choosing a specific residence?

Before making any final decision in changing a residence, visit the prospective setting. Have the individual visit to gauge his or her feelings. Be sensitive to the tremendous upheaval any such change brings.

E. Paying for Medical Care

What is *Medicare*?

Medicare is a federally-funded program that covers part of the cost of hospital and doctor care. People are eligible if age 65 or older, or permanently disabled, or receiving kidney dialysis.

Some services, such as annual checkups, routine food care and hearing aids are not covered at all by Medicare.

There are both deductibles and co-payments for covered services. A premium is deducted each month from the individual's Social Security check.

When should application for Medicare be made?

Contact the Social Security office a month before the individual turns 65.

May a doctor charge a Medicare beneficiary any amount?

No. There are strict limits to the amount a doctor can charge.

A doctor who *accepts assignment* will only charge what Medicare considers reasonable. He or she bills the patient for any deductible and co-insurance, and collects the balance directly from Medicare.

What if a doctor does not accept assignment?

The patient must pay the bill. Medicare will reimburse the patient for the *reasonable charge*.

Do I have to complete paperwork to claim benefits from Medicare?

No. Federal law requires the doctor to complete the paperwork. You will receive an *Explanation of Benefits* from Medicare, showing what Medicare has and has not covered.

Does Medicare cover long term care?

Medicare covers skilled nursing home care for a limited time, and only in certain circumstances. Medicare covers no basic care.

Medicaid does cover both skilled and basic care.

What is *Medicaid*?

Medicaid is a program funded jointly by the federal government and Michigan, administered by the county office of the Michigan Family Independence Agency. Eligibility depends on an individual's age, marital status,

income, assets, and in some cases, amount of medical bills. Eligibility is re-determined once a year.

There are relatively small co-payments for some services. Reimbursement is always made directly to the health care provider.

Are there special Medicaid eligibility rules if an individual in a nursing home has a spouse at home?

Yes. There are complicated rules designed to prevent *spousal impoverishment*. Consult the pamphlet listed in the Resources chapter for more details.

If an unmarried individual in on Medicaid, will all of his or her income go to the nursing home?

No. He or she can retain \$60 a month for personal needs.

The individual can also have \$2,000 in the bank and still be eligible for Medicaid.

Does an individual have to sell his or her home to be eligible for Medicaid?

No. An individual's home is an *exempt asset*, and is not considered in determining eligibility.

Will an individual who receives Medicaid have to pay money back?

Under federal law, each state must have a system of *estate recovery*. After a recipient's death, the state may claim part of the individual's estate as repayment.

Michigan had not implemented the law. There is no estate recovery in Michigan at present.

Can an individual be enrolled in both Medicare and Medicaid?

Yes.

Are there special Medicaid eligibility rules for people enrolled in Medicare?

Yes. Depending on an individual's income and assets, Medicaid may be available to pay the Medicare monthly premium, or the premium plus Medicare deductibles and co-insurance.

What are some other resources that can help with medical expenses?

- Veterans Hospital
- Emergency Pharmaceutical Program
- Private Insurance

What benefits are available through a Veterans Hospital?

A veteran can receive hospitalization and outpatient care. The VA also contracts with nursing homes for long term care. Contact the Veterans Administration for more information.

What is the Michigan Emergency Pharmaceutical Program for Seniors?

This program is available to individuals age 65 or older who are relatively low income and have high prescription drug costs.

Where can I find out about the Emergency Pharmaceutical Program?

Contact your local Area Agency on Aging for more information.

If the individual has been paying premiums for private insurance, should I continue to pay?

If the individual does not qualify for Medicaid, and the policy seems like a good value, consider continuing the insurance.

You may have to complete the paperwork to make a claim for benefits under the policy.

F. Medical Treatment Decisions

What is a *health care proxy*?

An adult of sound mind may, in writing, designate another adult to make medical treatment and personal care decisions for him or her in the event of he or she becomes unable to participate in such decisions. The adult designated is known as a *patient advocate*.

What if I discover the individual has a patient advocate?

Bring the health care proxy document to the attention of the probate court. If the patient advocate is still available and willing to serve, the court should restrict your power to make medical treatment decisions.

What if the court was already aware of the health care proxy?

If your letters of guardianship show no restriction, you have authority to make medical care decisions. You should still pay attention to any of the individual's wishes expressed in the health care proxy.

What is a *living will*?

A living will is a document in which a person expresses his or her wishes about medical treatment, in the event he or she should become terminally ill or permanently unconscious, and unable to participate in treatment decisions.

Are living wills binding in Michigan?

There is no state statute. But court decisions are consistent with the validity of living wills.

Whether binding or not, these documents may provide strong evidence of an individual's wishes.

In general, what powers does a guardian have?

A guardian has the right to authorize or refuse procedures for the diagnosis and treatment of injury or illness. This includes physical examinations, tests, inoculations, dental work, non-surgical treatment and surgery.

What should I do upon being appointed guardian?

If the individual has a personal physician, let her or him know you have been appointed guardian. Find out whether the individual is undergoing any treatment, including taking prescription medication. Ask how often the doctor wants to see the individual.

If the individual doesn't have a doctor, may I choose one?

Yes. The individual should then undergo a comprehensive examination.

Do I have the right to change doctors?

Yes. Certainly if you feel the doctor is not well serving the individual, you have an obligation. In other circumstances, consider how the change will

affect the individual. If you do change, make sure the new doctor gets all current medical records.

What should I do next?

One important issue is to discern whether the individual needs any adaptive devices: a new prescription for eyeglasses, a hearing aid, a wheelchair.

What steps should I take in making a treatment decisions?

Speak with the doctor about treatment options, side effects and prognosis. Elicit the doctor's recommendation. Get a second opinion if this is a major decision.

Consult the individual. Try to follow his or her present or prior wishes, if known. If unknown, act in what you perceive to be the individual's best interest, considering the information available to you.

How do I determine the individual's wishes?

Talk with the individual. Review any health care proxy or living will. Contact close friends and relatives about previous statements the individual may have made.

Make sure the doctor knows the wishes of the individual.

Should I speak with family before making a major treatment decision?

Yes. But the ultimate decision is yours.

Do I have access to medical records?

Yes. You may review the individual's medical records, whether they be in the doctor's office, a nursing home or the hospital. Medical records can be quite difficult to understand; ask for help if you need it.

May I take the individual to medical appointments?

Yes. You should do this if the individual has no other transportation.

May I authorize transportation by ambulance if necessary?

Yes. Have an emergency plan ready before an emergency occurs.

Do I have power to authorize mental health treatment?

A guardian may arrange for outpatient counselling or therapy, and consent to psychotropic medication. A guardian can not authorize inpatient treatment if the individual objects, but must instead seek a commitment order through the probate court.

What type of counselling might the individual need?

An individual might need treatment for depression or affective disorder, counselling for grief or substance abuse.

If the individual has been committed to inpatient treatment by the court, may I move him or her elsewhere?

No. If you feel the individual would be better served in community treatment, or in another facility, first call the community mental health agency. If still dissatisfied, you can seek a hearing before the probate court.

May I authorize an organ transplant to the individual?

Yes.

May I consent to experimental treatment?

It is the best course to seek court approval.

What is *life-sustaining treatment*?

This inexact term can apply to any medical intervention, such as a respirator, without which a person will die. The term often applies in situations of terminal illness or permanent unconsciousness.

Do I have the right to order the withholding or withdrawal of life sustaining treatment?

In some circumstances, you would have such power.

Would this include the withdrawal of nutrition and hydration provided through tubes?

Yes.

What is a *do-not-resuscitate order*?

A do-not-resuscitate order is a note written in a person's hospital or nursing home medical chart. If the individual's heart beat or breathing stops, no effort is made to revive him or her. A do-not-resuscitate order is also known as a *no code*.

Do I have the power to authorize a do-not-resuscitate order?

You can authorize an order in a hospital setting. You do not have authority to sign a do-not-resuscitate declaration applicable in a nursing home or home setting.

How do I make decisions about life-sustaining treatment or do-not-resuscitate orders?

First, learn all you can about the individual's medical condition, treatment and prognosis.

Second, review any living will or other advance directive the individual signed, to see whether it applies to the present situation.

Third, attempt to communicate with the individual about the decision to be made. Give him or her an opportunity to express any current wishes. You may abide by expressed wishes if you feel the individual understands the situation. But let family members know of any decision before acting.

What if the individual is unable to express any wishes?

If there is clear and convincing evidence of the individual's wishes expressed previously, follow those wishes. You might find such evidence in a document such as a living will, or from conversations the individual had with friends or family.

What if there less than clear and convincing evidence?

For usual decisions, consider any evidence available. If the decision concerns withholding or withdrawing life-sustaining treatment, petition the Probate Court for direction.

How do I weigh evidence?

Consider how long ago the wishes were expressed, how thoughtful and consistent they seem, and how specific they were.

What if there is no evidence of previously expressed wishes?

You must act on what you perceive to be the best interests of the individual. If the issue is life-sustaining treatment, petition the Probate Court. The court might be interested in the following factors relating to the individual:

- Present level of awareness and functioning
- Amount of pain from the condition, the treatment and from withdrawal of treatment
- Loss of dignity from the condition
- Life expectancy with and without treatment
- Risks and side effects of treatment

May I approach a medical ethics committee in a hospital for their input?

Yes.

What if an individual is at home and a decision has been reached not to resuscitate?

If you are present at the individual's death, do not call the police or 911, as that will trigger the *emergency medical system*.

Contact the doctor, or if the individual is a hospice patient, the hospice nurse. Either a doctor or a registered nurse can pronounce death.

What if I am unsure whether I have the power to make a medical or other decision?

You can consult a lawyer for advice. If you are still unsure, you can petition the Probate Court for instructions.

To petition, request a hearing date from the court, and send a *notice of hearing* and a copy of the petition to *interested persons*. Notice should be sent to interested persons at least 14 days before the hearing, and personally delivered to the individual at least 7 days before the hearing.

**PC 586 Petition and Order
PC 562 Notice of Hearing**

Who are interested persons?

- The individual
- The individual's spouse and adult children
- If no living spouse, child or parent, the nearest relatives
- If no known relatives, the state Attorney General

What do I do after delivering the copies?

File a *proof of service* with the court.

PC 564 Proof of Service

3. VISITING THE INDIVIDUAL

How often am I to visit the individual?

The number of times you should visit the individual is dependent on the needs of the individual. Factors include whether the guardianship is limited, the living situation of the individual, his or her health, the effectiveness of telephone contact, and the incidence of visits by others the individual knows.

For some individuals, one visit each week would be appropriate; for others, once a month might suffice.

Is there a minimum number of visits required by the court?

No. But if an annual report shows few visits over the year, the court might question the adequacy of visitation.

How long should each visit last?

Again, this depends on the needs of the individual. Some individuals may prefer shorter visits, occurring more often. Others may need time to emerge from a withdrawn state.

What are some purposes of visits?

One purpose is to ensure the daily needs of the individual are met. This is important both for individuals living in their own homes and for those in nursing homes or adult foster care homes. Staff may be more attentive to the needs of an individual who has visitors.

During the visit, you can observe the physical appearance and frame of mind of the individual, listen for any complaints from the individual, check on his or her possessions, and consult with staff.

Visits are also a means to develop a relationship of trust and to learn more about the wishes of the individual.

Finally, a visit is social contact for the individual. For some, a guardian will be the only visitor he or she has, the only link to the community.

May I take the individual on outings?

Yes, although this is not a requirement. As guardian, you should be aware of what you must do and what you can do. Without efforts by the guardian, the individual may be unable to enjoy a ride in the sunshine, a restaurant meal, a trip to the movies, an opportunity to shop.

Should I arrange visits in advance?

You should honor the wishes of the individual in this regard.

Need I inform a nursing home in advance of a visit?

No. Indeed, for purposes of judging the care an individual is receiving, it is better if the nursing home does not know of a visit in advance.

Can a nursing home restrict my access to the individual?

No.

Should I keep a record of visits?

Yes. Note in a diary the date of a visit, the amount of time spent, any contacts aside from the individual, and your observations.

4. REPORTING TO THE COURT

What are my obligations to report to the court?

A guardian must file a written report annually on a court form.

PC 634 Annual Report of Guardian

When is my first annual report due?

The annual report is due within 56 days of the anniversary of your appointment. The due date for the report is important - write it down on your calendar each year.

What does the report include?

In the report, you must inform the court of the individual's -

- Living arrangement
- Physical and mental health
- Medical treatment
- Social activities
- Visits
- Need for continued guardianship

How might I make it easier to complete the report?

One good idea is to keep an informal diary, including dates of your visits, doctor appointments, services obtained and significant occurrences. You can then use information from the diary in completing your report. A sample blank diary is included later in this booklet.

Although not required as part of the report, it may be helpful to keep a record of the time you spend on guardianship matters, broken down into visits, appointments, errands and paperwork.

Is there a court fee for submitting the annual report?

No.

To whom must I send a copy of the report?

You should send a copy to each interested party. You should deliver a copy to the individual in person.

Need my report include an *account*?

The court might require you to attach an account to your report if you control any of the individual's finances.

PC 583 Account of Fiduciary

What is an account?

An account shows all money and property received during the year, and all expenses. Both receipts and expenses can be listed by category. For example, the total amount of Social Security checks received during the year, or the total amount paid for nursing home expenses can be listed on a single line.

An account also shows the value of all property left at the end of the account period.

What if the individual receives benefits from the Veterans Administration?

If you control a benefit the individual receives from the Veterans Administration, send a certified copy of the account to the VA regional office.

What if there are other things I want to inform the court about?

You can include any information you feel would be helpful to the court on a separate piece of paper and attach it to the annual report.

What happens if I can't get my report in on time?

You may request an extension. If you fail to file a report, you can be suspended or removed as guardian.

What are purposes of the annual report?

The report provides feedback to the court on the condition of the individual and the performance of the guardian. As guardian, use the report as an opportunity to reassess your role.

Is there court oversight aside from the annual report?

Yes, one year after appointment of a guardian, and every three years thereafter, the court will appoint a *visitor* to speak with the individual, to speak with the guardian, and to report back to the court.

How should I deal with the visitor?

You should cooperate. Share any concerns you have. See this as an opportunity to get another perspective, and to get recognition for a job well done.

Who will get a copy of the visitor's report?

Both you and the individual will receive a copy of the report. -

PC 636 Report on Review of Guardianship

PC 637 Order Following Review of Guardianship

5. CHARGING FOR SERVICES

May I charge for services as guardian?

Any fee a guardians charges is subject to court approval. A court may have a fee schedule, or decide in each case whether requested fees are just and reasonable.

If an individual receives Veterans benefits, the fee cannot exceed 5% of the individual's income, without a court hearing with notice to the Veterans Administration.

If the individual is in long term care and enrolled in Medicaid, state law limits the amount a guardian may charge to \$60.00 per month.

Should I charge a fee?

You must decide whether you feel comfortable charging a fee as guardian for a family member or friend.

Am I also entitled to reimbursement for expenses?

Yes. You are also entitled to reimbursement for out-of-pocket expenses, such as mileage, postage, xerox copies and long-distance telephone calls.

Where does money to pay the guardian come from?

Generally, money for fees and expenses comes from the individual's assets.

Do I need court approval before taking the fee?

Yes. But you can reimburse yourself for out-of-pocket expenses without prior court approval.

How do I get court approval?

The court may approve a fee arrangement in the initial guardianship order. If not, you could request approval at the time of the annual report or another time. You should keep good records of time you spend on guardianship matters - the burden is on you to show you are entitled to the fees you request.

If I provide room and board to the individual, may I charge for these services?

If you, your spouse, or your child wish to charge for room and board, you must first get approval of the Probate Court or a separate conservator if there is one. In either case, charges will only be approved if reasonable.

May I hire a lawyer to advise me as guardian and pay the lawyer from the individuals' funds?

Yes. It is a good idea to have a written fee agreement between you and the lawyer. Interested persons can object to the court if the fee appears unreasonable.

How do I find a good lawyer to advise me?

There is no sure-fire way. Here are some suggestions:

1. If you have dealt with a lawyer in the past and were satisfied, go back to that person. If he or she does not handle the present type of problem, he or she can recommend someone who does.
2. Ask friends, neighbors or relatives for someone with whom they have been pleased.
3. Call the county or state bar referral service, which will provide you with the names of one or more lawyers.
4. Consult the yellow pages or newspaper classified section.

When should I consult with the lawyer?

If you have questions about your responsibilities or the individual's rights, do not hesitate to contact your lawyer for advice.

May I solicit help from an accountant or other tax advisor?

Yes. You may need advice as to whether a federal return need be filed, and what credits are available on a federal and state return.

Do I have authority to sign a tax return?

A guardian does not have authority to sign a tax return.

6. LIABILITY

Might I be sued because of damages caused by the individual?

The law provides you are not financially responsible to other people due to acts of the individual.

What if I had an accident while transporting the individual?

You as driver and the individual as passenger would be covered by your automobile insurance policy to the limits of that policy.

Might I be sued by family members for a medical decision I made?

A lawsuit will not succeed if you were acting within your authority, and you made the decision in good faith after consultation with medical personnel. If you are threatened with a suit about a proposed decision, contact probate court.

Am I liable if a doctor is negligent in treating the individual?

No.

Are there any circumstances where I will be held liable?

Yes. You will be responsible if you deliberately misuse funds of the individual. You may also be liable if you act outside your authority.

What can I do to minimize the chance of a successful lawsuit?

Michigan Protection and Advocacy Service suggests the following points:

- Know the limits of your authority

- If you have questions, ask
- Document your activities
- Keep the individual's money and property separate from your own
- Use your common sense

7. CHANGED CIRCUMSTANCES

A. Termination or Modification of Guardianship

How long will the guardianship last?

Some individuals may need a guardian for a relatively short time, perhaps as they recover from a stroke. Other individuals may suffer from a degenerative condition such as Alzheimers Disease, and need a guardian for the rest of their lives.

What if the individual for whom I am guardian regains the ability to make informed decisions?

You should petition the court for termination of the guardianship.

What if I am limited guardian but the individual's condition deteriorates?

You can petition the court for modification of your powers. The procedure will be much the same as in the initial petition for guardianship, with notice to interested persons and a hearing.

PC 638 Petition to Terminate or Modify Guardianship

What if the individual him or herself wants me to have fewer powers or wants the guardianship terminated?

The individual has the right to petition the court or to contact the court by informal letter. You are prohibited from interfering with transmittal of such a letter. Upon receipt of a petition or letter, the court will appoint a lawyer for the individual.

B. Delegation of Powers

What should I do if I plan a short vacation?

Make sure the doctor, the nursing home and others have your telephone number so they may reach you in an emergency.

If I go on a long vacation, can I make arrangements for the individual?

You may sign a *power of attorney*, a document transferring your authority as guardian to another person for a period up to six months.

What powers may I delegate?

You may delegate any of your powers, whether they concern the care, the custody or the property of the individual.

To whom should I transfer my authority?

You should choose a person you trust, who is able to handle the task and who is willing to serve.

How do I get a power of attorney document?

You can contact a lawyer to draft the document, or you can use the form in this book.

Durable Power of Attorney Delegating Guardian's Powers

What should I do upon signing the document?

Inform the individual for whom you are guardian another person will have temporary authority to make decisions. Share a copy of the document with the bank and health care providers. Make sure they will honor the document.

Should I notify the probate court?

Yes. You have an obligation to contact the court within seven days, providing the court with the name, address and telephone number of the person who will be acting in your stead. It is a good idea to send a copy of the power of attorney to the court.

The court may require the person to sign an Acceptance of Appointment.

PC 571 Acceptance of Appointment

C. Resignation or Removal of Guardian

If I feel I can no longer handle the responsibilities, may I resign as guardian?

Yes.

How do I resign?

File a petition with the court. Include a final report, and a final account if you have control over the individual's finances.

PC 638 Petition to Terminate or Modify Guardianship

Is necessary for me to find a replacement?

You may resign without finding a successor, although it will be helpful if you can find someone.

What will happen upon my discharge as guardian?

If you control the finances of the individual, you will turn over all assets to the successor guardian. It will be helpful for you to meet with the successor to transfer assets, turn over important documents and discuss outstanding issues.

Under what circumstances might I be removed involuntarily?

The court can remove a guardian who fails to file annual reports, misuses the individual's funds, or does not perform his or her duties effectively.

D. Appointing a Successor

May I choose a successor?

If you are guardian for your spouse or your child, you may in your will appoint a successor guardian. The successor guardian would take over the guardianship when you die, although the individual would have opportunity to object to the court.

Does this have to be done in a will?

No. You can appoint a successor in any document you sign and which is witnessed by two people.

8. DEATH OF INDIVIDUAL

What should I do upon the death of the individual?

First contact any family. Notify the Probate Court and bring the court a certified copy of the death certificate, and the individual's will, if you know its location.

May I consent to an autopsy?

Yes.

May I follow through on organ or body donation according to written wishes of the individual?

Yes.

Can I arrange for the individual's funeral?

If there is no family, and the individual had not made any plans, you can make funeral and burial arrangements, paying with the individual's funds. If you do not have control of the funds, seek payment from the person who does.

As with nursing home contracts, if you personally assume financial liability beyond the individual's assets, you may be liable for payment.

What if the individual dies with no funds?

One or more of the following sources may be available to help defray the cost of funeral and burial:

- Family Independence Agency grant
- Social Security death benefit
- Veterans benefits

What are my further responsibilities?

Generally, your responsibilities end at the death of the individual. If you have possession of any assets of the individual, you would transfer them to whomever is appointed as personal representative for the estate.

What if no one petitions for probate of the estate?

You can inform agencies such as Family Independence Agency, Social Security Administration and Veterans Administration from whom the individual was receiving benefits, of his or her death. If checks come after death, note the fact and date of death on the back of the check and return it.

You can turn over to family any personal effects. If there is no family, you may donate clothes and furnishings as you believe the individual would have wished.