
LEGAL INTERVENTION PROCESS

Whenever non-legal intervention fails to meet the goal of protection, the need for voluntary or involuntary legal intervention may be utilized to protect the client. The APS worker must evaluate the need for legal intervention and it should be initiated **only** when the following conditions exist:

- Endangerment cannot be eliminated with the use of the social intervention process, **and**
- The client requests or voluntarily accepts legal assistance because physical or cognitive limitations result in the inability to manage ones own affairs **or** the client does not consent to legal action but is endangered because he/she is unable to exercise independent judgment due to cognitive or physical limitations.

The APS worker must keep the case open until the probate court legal action is completed and the client is in a safe and stable situation. The appointment of a guardian or conservator does not automatically indicate case closure or preclude continued worker involvement with the client.

- A MDHHS adult services worker must **not** serve in the following capacities for a MDHHS client:
 - Representative payee.
 - Power of attorney.
 - Conservator.
 - Guardian.

Note: If appointed as guardian or conservator by the court, the worker must notify the court in writing that the appointment must be declined.

Exception: When the client is a relative of the worker and there is no one else available to serve in this capacity, an exception may be made by the local office director or designee.

Under no circumstances is a MDHHS worker to serve as a guardian ad litem or visitor for cases in which **MDHHS is the petitioner.**

Voluntary Legal Intervention

The APS worker is responsible for the following:

- Involvement of the client in a discussion about the intervention, pertinent laws, rationale for the action, responsible parties for performing the tasks and the anticipated results.
- Being knowledgeable of the following available interventions and arranging for the intervention as indicated:
 - Support the individual in seeking assistance with establishing a power of attorney agreement if the adult is believed to have the capacity to make informed decisions. The individual with power of attorney is then authorized to act on behalf of the client. Powers should be specifically limited in scope and time.
 - Arrange for the Social Security Administration's (SSA) designation of a representative payee for social security benefits.
 - File a petition for appointment, review or termination of a guardian/conservator. Voluntary appointment of a conservator is available for an adult believed to have the capacity to make informed decisions but is unable to manage their affairs due to physical disability or impairment.
 - File a petition through probate court for appointment of a partial or plenary guardian for an individual with a developmental disability.
 - File a petition through probate court for hospitalization if the client is believed to be mentally ill and resultant behavior is harmful to self or others.

Involuntary Legal Intervention

Involuntary legal intervention must be initiated only when necessary to **avoid serious harm to the client** and when there is reasonable cause to believe **the adult lacks understanding or capacity to make or communicate informed decisions**.

The types of involuntary legal intervention include but are not limited to:

- Involuntarily acquired third party payee.
- Representative payee arrangements initiated by SSA.
- Involuntarily acquired conservator.
- Involuntarily acquired guardianship.
- Petitions to probate court for a single temporary act such as freezing a bank account.

The APS worker is responsible for completing the following actions prior to initiating involuntary legal action:

- Consult with the involved persons or agencies including relatives, physicians, community mental health agencies and MDHHS/BPHASA or service providers using a multidisciplinary approach.
- Consult with law enforcement and/or the prosecuting attorney regarding the appropriateness of a civil involuntary hospital admission, proceeding under domestic violence laws or obtaining some other form of restraint.
- Obtain written supervisory approval of the service plan.

Exception: If there is an emergent, life threatening situation secure verbal supervisory approval and complete the above steps as soon as possible.

- **Advise the individual with first hand knowledge that they are the preferred agent to seek legal action.** Assist that individual with obtaining legal action.
- Institute legal action whenever others are not available or can/will not take action.
- Obtain legal advice and/or representation from the local prosecuting attorney's office or contact Supportive Adult Services Section for information.

Note: APS workers must be represented by legal counsel for any contested probate court hearings where APS is the petitioner.. If

legal representation is needed, follow the steps in ASM 218, Adult Protective Services Legal Representation.

PREPARATION FOR SPECIFIC LEGAL ACTIONS FOR

Financial Management

Protective financial management includes specific arrangements which provide protective management of an individual's resources, including:

- Representative or third-party payees.
- Power of attorney agreements.
- Special contractual agreements.
- Conservator acquired voluntarily or involuntarily if serious harm to the adult is to be avoided.

Such arrangements are based upon any of the following:

- The individual's request and agreement.
- The administrative judgment of the involved agency with respect to payments it issues.
- The order of probate court.

Guideline for Evaluating Financial Management Problems

The following are general principles that can be used in guiding the APS worker in determining which type of protective financial management may be appropriate.

- Voluntary arrangements for management of the adult's finances and affairs can be used any time there is a benefit to the adult and the adult has the mental capacity to consent. If the adult is believed to have the capacity to make informed decisions, recommend the voluntary arrangements of:
 - Power of attorney.
 - Special contractual agreement.

- Involuntary arrangements can be used only when there is reason to believe the adult's inability to manage ones finances and affairs will result in endangerment to the adult.
- **Conservatorship** and **third party payees** are appropriate if there is reasonable cause to believe the adult lacks mental capacity to manage personal finances or affairs. These arrangements may be used in involuntary situations. Conservatorship may also be used when the adult has adequate mental capacity but a physical disability or substance abuse problem prevents adequate management or discharge of financial and other personal affairs. Conservatorship and protective payees can also be voluntarily requested by the adult.
- Age or a particular medical or psychiatric diagnostic classification does not in and of itself imply a person's inability to manage funds.
- The cause and severity of an individual's money mismanagement problem should always be evaluated. An example of money mismanagement may be eviction as a result of nonpayment of rent or a utility-shut off due to failure to keep payments current. The cause may be an exploitative relative and the adult's inability to protect self interests, rather than a mental incapacity.
- The individual's functioning level must also be evaluated since the diminished capability may be evidenced by different behaviors. For example: poor memory may result in repeated complaints of non-receipt of Social Security checks when in fact they were received.
- It is important to determine if the individual's condition is temporary, modifiable, or permanent. Counseling or training may be a solution. The local community mental health agencies and physical rehabilitation agencies may be consulted to aid in the assessment. A survey of other resources available to the individual should be made.

**When Informal
Protective
Financial
Management
Exists**

When an informal agreement with respect to handling of payments and resources exists with a landlord, relative, or some other person, APS workers must evaluate the need for some form of legal contract.

Minimally, encourage the individual and other person to write out their agreement; assist individual to obtain legal counsel before the agreement is finalized (for example: legal aid, Legal Hotline for Michigan Seniors, etc.).

Power of Attorney

Power of attorney (POA) is arranged with a legal written agreement between two adults with the capacity to make informed decisions, and it authorizes one person to act in behalf of the other person as that person's agent (i.e., in place of the other person). The POA agreement should be notarized and should show a begin and end date. The agreement should not give a general power of attorney but should state the specific limited functions and responsibilities of the agent.

Note: Effective September 30, 2012, Michigan law requires that any designee under a Durable Power of Attorney must sign an acknowledgement of their responsibilities. The specific language can be located in MCL 700.5501.

The POA can be terminated at any time by the protected adult by sending notice of termination to the designated POA. A copy should be sent to other persons/entities involved in transactions with the designated POA.

The APS worker must advise the adult to seek legal counsel if they choose to enact a POA (such as legal aid, Legal Hotline for Michigan Seniors, etc.).

**Representative
Payee
Arrangements**

The Social Security Administration (SSA) is responsible for designating a person as a **representative payee** to directly receive and

manage the SSA benefits of SSA recipients whom it has determined incapable of managing their own benefits. The SSA benefits can be those received under Title VI (SSI) or under Title II of the Social Security Act.

The SSA requires that a representative payee be designated for a recipient of SSA benefits for whom a diagnosis of drug addiction or alcoholism contributes to a finding of disability.

The SSA is responsible for locating representative payees and gives primary consideration to persons who normally have responsibility and a continuing concern for the well-being of the individual, such as a guardian. Although nursing homes and other residential facilities can serve as representative payees, they are the least preferred by SSA.

A DHS-SSA agreement provides that local MDHHS offices recruit, screen and prepare volunteers to serve as representative payees. SSA may request MDHHS assistance in finding a person to serve as representative payee but only if SSA is unable to find one.

The worker must contact the MDHHS community resource coordinator for arranging a volunteer to serve as representative payee if no other person is available.

Court Appointment Of a Conservator

Involuntary appointment of a conservator must be pursued only when there is evidence that the individual:

- Cannot manage their resources adequately to assure proper support, care and welfare to the extent needed to avoid endangerment, **and**
- Will not or cannot make a voluntary arrangement such as representative payee, voluntary appointment of a conservator, or power of attorney.

APS staff or any interested person, including the individual adult, can petition the probate court for:

- Appointment of a conservator with broad or limited powers.
- Termination of conservatorship because there is no longer any need for one.

- Removal of one conservator and appointment of another, the petition must include the name of the new conservator.
- An order limiting the powers of the conservator or instructing the conservator to act.
- An order for the conservator to account for the adult's estate.

Voluntary appointment of a conservator is available for willing adults, with the capacity to make informed decisions, who are unable to manage their finances and affairs due to a physical disability or other impairments.

Exception: Court appointment for management of property and affairs of a developmentally disabled person must be sought under the Mental Health Code. See ASM 215, Guardianships under the Mental Health Code.

If only a single temporary act is needed (such as freezing a certain bank account), then the probate court can be petitioned for a protective order instead of appointment of a conservator. The probate court can also exercise the same powers of a conservator.

PREPARATION FOR SPECIFIC LEGAL ACTIONS FOR

Management of The Person

Protection through personal management **includes** arrangements which provide protection for the individual adult's person and include the following:

- Guardianship (limited or full powers) under the Estates and Protected Individuals Code (EPIC).
- Temporary guardianship by probate court appointment .
- Guardianship for the developmentally disabled under the Mental Health Code (MCL 330.1600 - 1644).
- Judicial Admission under the Mental Health Code (MCL 330.1515...330.1522).
- Civil admission under the Mental Health Code (MCL 330.1400...330.1410) . Community mental health agencies

should be consulted regarding commitment procedures and may even assume responsibility for the case.

General Guidelines On the Use of Arrangements for Management of the Person

When determining the need for management of the person the APS worker must consider the following:

- Every individual has a right to self-determination and independent decision making is to be encouraged.
- The risks to the individual adult must be so great that **death or serious physical harm** will result if some management of the person is not arranged.
- The ability of the individual to make decisions relating to critical needs and in understanding the risks and consequences of decisions that are made must be so impaired as to cause endangerment.
 - The individual's refusal to accept the services offered by the department is not in itself a reason for seeking guardianship.
 - Advanced age, developmental disability or a mental illness diagnosis by itself does not mean the adult is unable to make decisions nor needs a guardian.
- The worker's evaluation must identify what will be specifically accomplished for the individual if management of the person is arranged. Meal preparation or grooming may be better accomplished by a friend or in a foster care home instead of by a guardian or in a mental health institution.
- The worker must assess if the incapacity is temporary, modifiable, or permanent. The question of treatability of the incapacity needs to be addressed as does the benefits of training.
- A multidisciplinary approach is to be used to the extent possible.

**Guardianship
Under the Estates
and Protected
Individuals Code
(EPIC)**

A **guardian** is a person or other entity appointed by the probate court to provide necessary supervision and care of a legally incapacitated person. The court makes the appointment only when there is clear and convincing evidence that the person is legally incapacitated and that the appointment is necessary as a means of providing continuing care and supervision of the person.

A **legally incapacitated person** is one who lacks understanding or capacity to make or communicate informed decisions about one's person because of a mental or physical impairment or because of use of drugs or chronic intoxication.

An informed decision is one made with an awareness and consideration of all relevant facts, including the risks and consequences of each decision. It focuses on the decision-making process.

Guardianship under EPIC covers mentally ill persons but not developmentally disabled persons.

Unless limited by the court order, a guardian has the following powers and duties for a legally incapacitated person as outlined in MCL 700.5314:

- Establish the person's residence.
- Visit the ward within 3 months of appointment and not less than once within 3 months after each previous visit.
- Notify the court within 14 days of any change in the person's place of residence.
- Provide for the care, comfort, and maintenance of the person, if entitled to custody.
- Arrange for the person's training and education, if appropriate and entitled to custody.
- Secure service to restore the person to the best possible state of mental and physical well-being, if entitled to custody.

- Take reasonable care of the person's clothing, furniture, vehicles, and other personal effects.
- Give any consent necessary to enable the person to receive medical or other professional care, counsel, treatment or service.
- Institute proceedings to compel a person under a duty to support (such as a spouse responsible for monetary care of the individual) the legally incapacitated person or to pay sums for the welfare of the legally incapacitated person to perform that duty, if a conservator has not been appointed.
- Receive money and property deliverable to the person and apply it toward the person's support, care, and education.
- Report to the court the person's condition at least yearly. The report must include:
 - The person's current mental, physical, and social condition.
 - Any improvement or deterioration of the person's mental, physical, and social condition over the past year.
 - The person's present living arrangement and any changes over the past year.
 - Whether the guardian recommends a more suitable living arrangement for the person.
 - Any medical treatment received by the person.
 - Services received by the person.
 - A list of the guardian's visits and activities on behalf of the person.
 - A recommendation as to the need for continued guardianship.
 - Pay any excess funds to a conservator, if one has been appointed

APS staff or any other interested person may petition the probate court for:

- Appointment of a guardian.

- Termination of a guardian.
- Removal of one guardian and replacement by another; the petition must include the name of the new guardian.
- Modification of a guardianship.

The individual adult may also petition the probate court for any of the actions listed above.

APS staff **must** petition for appointment of a guardian as an involuntary legal action only when life or serious physical harm is threatened and the APS worker has reasonable cause to believe the endangered person lacks the understanding or capacity to make an informed decision. APS staff **may** petition for the other court actions listed above when it would be in the best interest of the adult.

The person petitioning for the appointment of a guardian **is responsible for** identifying the person or entity who will serve as the guardian.

Temporary Guardian Under EPIC

In emergencies, APS staff or an interested person may petition the probate court for appointment of a temporary guardian for a person determined as legally incapacitated by the court. The temporary guardian will have only such powers as needed to abate the emergency and for a period not to exceed six months.

The probate court can exercise the powers of a temporary guardian in emergencies if no person or entity is available to act as temporary guardian. Before a temporary guardian is appointed there must be a hearing with notice to the person alleged to be incapacitated, a showing that the person is legally incapacitated, and it must appear that no other person has the authority to act. A hearing with notice to interested parties must be held within 28 days after the court has acted.

The APS worker must petition the probate court for appointment of a temporary guardian **only when the immediacy of the threat of death or serious physical harm does not permit waiting for a full hearing on appointment of a guardian**. When filing a petition for temporary guardian the local office should simultaneously petition for appointment of a guardian unless:

- The adult is not expected to live.
- The risk of harm is known to be of short duration.
- The adult's incapacity is expected to end within a short time.

COURT ACTIONS UNDER THE MENTAL HEALTH CODE

Plenary Guardians and Partial Guardians

Plenary guardians and partial guardians can be appointed for developmentally disabled (DD) persons only under Chapter 6 of the Mental Health Code. Only a probate court can make the appointment and whenever possible must appoint a partial guardian, with powers commensurate with the DD person's abilities, instead of a plenary guardian. The court can determine that the person is DD and the level of dysfunction only by the use of clear and convincing evidence.

Unlike all other guardianships, appointment of a partial guardian does not reduce or remove the individual adult's civil rights unless specified otherwise in the court order. A partial guardian has only those powers listed in the court appointment order.

Developmental disability is defined by the Mental Health Code: 1974 PA 258, Sec. 330.1100a (21).

Note: Guardianship for DD persons must be used only as necessary to promote and protect the well-being of the person.

APS staff or any interested person or entity, including the DD person may petition probate court for appointment, removal and replacement, termination or modification of the guardian's powers.

APS staff, when initiating any of these actions, must attempt to obtain the assistance of the local community mental health agency.

A current psychological evaluation is required to accompany the petition for appointment of a guardian of a DD person.

Civil Admission

Civil admission to a hospital or institution for treatment for mental illness is provided by Chapter 4 of the Mental Health Code. Civil

admission to a hospital or institution for treatment or services for persons with developmental disabilities is provided for in Chapter 5 of the Mental Health Code.

Under both Mental Health Code chapters, individuals may seek voluntary admission. A person who has been diagnosed with an intellectual disability, cannot be admitted by voluntary admission. A person diagnosed with an intellectual disability can be admitted to a MDHHS/BHDD facility for a developmental disability only by judicial order.

Chapter 4 provides for involuntary admission of the mentally ill by:

- Admission by medical certification delivered to the hospital or institution.
- Protective custody by a law enforcement agency.
- Admission by petition to court.

Chapter 5 provides for involuntary admission of developmentally disabled persons by judicial admission.

When any type of admission to a mental health or developmental disability treatment facility is to be considered, the APS worker must make a referral to the community mental health agency.

If the mental health agency is unable to initiate action and a life threatening situation exists or serious physical harm may result if no action is taken, the APS worker must initiate the appropriate action with the assistance of the local prosecuting attorney and/or the community mental health agency.

The community mental health agency should provide direction on how to proceed and provide evaluations of the person's mental condition.

When admission to a mental health or developmental disability treatment facility is being sought by other persons and there is reasonable cause to believe that the individual adult is at risk of harm from abuse, neglect or exploitation, the APS worker must intervene to protect the adult.

PROCEDURES FOR USING GUARDIAN/ CONSERVATOR- SHIP

The procedures for using guardian/conservatorships are determined by EPIC and good case management practice. Guidance may be sought from the local prosecuting attorney's office.

Court Procedures For Guardian/ Conservatorship

When petitioning for guardian/conservatorship under EPIC, the following court proceedings can be expected:

- There must be a person or entity named in the petition who is **willing** to serve as a guardian or conservator.
- Petition forms are available on the MDHHS share point forms page, online at the State Court Administrators Office website or from your local probate court. Be sure to obtain the form appropriate for the case, for example, the petition for guardian or conservator under EPIC or the petition for plenary or partial guardian under the Mental Health Code. If there is difficulty in obtaining the appropriate forms or if the probate court will not accept a petition unless completed by an attorney, notify the Adult Protective Services program staff in central office by email MDHHS-Adult-Services-Policy@michigan.gov.
- The petition must contain specific facts about the person's condition and examples of conduct to demonstrate the need for a guardian.
- Notice of the hearing must be served personally on the individual adult and any interested parties. The petitioner or counsel for the petitioner is usually responsible for arranging the delivery of notice on forms provided by the court.
- The court must take all practical steps to ensure the person is present at the hearing.
- The probate court must appoint a guardian ad litem. The duties of a guardian ad litem, as outlined in MCL 700.5305, are:
 - Personally visiting the individual.

- Explaining to the individual the nature, purpose, and legal effects of the appointment of a guardian.
- Explaining to the individual the hearing procedure and the individual's rights in the hearing procedure, including, but not limited to, the right to:
 - Contest the petition.
 - Request limits on the guardian's power.
 - Object to a particular person being appointed guardian.
 - Be present at the hearing.
 - Be represented by legal counsel and that legal counsel will be appointed for the person if he or she is unable to afford legal counsel.
- Informing the individual of the name of any person known to be seeking appointment as guardian.
- Asking the individual and the petitioner about the amount of cash and property readily convertible into cash that is in the individual's estate.
- Making determinations, and informing the court of those determinations on all of the following:
 - Whether there are one or more appropriate alternatives to the appointment of a full guardian or whether one or more actions should be taken in addition to the appoint of a guardian.
 - Whether a disagreement or dispute related to the guardianship petition might be resolved through court ordered mediation.
 - Whether the individual wishes to be present at the hearing.
 - Whether the individual wishes to contest the petition.
 - Whether the individual wishes limits placed on the guardian's powers.

- Whether the individual objects to a particular person being appointed guardian.
- The probate court may order that the person alleged to be legally incapacitated be examined by a physician or mental health professional to help assess the level of functioning. The person alleged to be incapacitated has the right to secure an independent evaluation, at state expense, if indigent.
- The court may grant a guardian only those powers and only for that period of time which the legally incapacitated person needs. The guardianship must encourage the development of the legally incapacitated person's maximum self-reliance and independence. The court order must specify any limitations on the guardian's powers and any time limits on the guardianship.
- The court may appoint a limited guardian if the legally incapacitated person lacks the capacity to do some but not all of the tasks necessary to care for him or herself.
- Michigan court rule, MCR 2.002, provides that court costs, fees and cost of publication of notice of the hearing, if needed, may be waived or suspended by the court upon a factual showing that the person who is petitioning is indigent or a recipient of public assistance. The waiver or suspension of costs may be requested by an affidavit (mc20) which states the facts of indigence or receipt of public assistance and is made by:
 - The person who is the subject of the hearing, or
 - Another person who has personal knowledge of the facts and shows he is acting in behalf of the other person because of that person's disability or the inability to act.

When petitioning for plenary or partial guardianship under the Mental Health Code, similar probate court proceedings can be expected with the following exceptions:

- The alleged developmentally disabled person is given court appointed legal counsel if the person does not have a self-paid legal counsel.
- A recent evaluation of the alleged developmentally disabled person's mental, physical, social, educational condition, adaptive behavior and social skills must accompany the petition or will be ordered by the court.

- The appointment order must specify the duration of the guardianship and specify the powers of a partial guardian.
- A standby guardian may also be appointed to act in the absence or incapacity of the plenary or partial guardian. The standby guardian may have only those powers and duties given the appointed plenary or partial guardian.

Review of Guardianship And Conservatorship

The probate court requires an annual report for review from all guardians and conservators on the status of the individual adult and his estate or finances. This report may be available to the local office for review at the appointing probate court.

The court must review each guardianship/conservatorship not later than one year after the appointment of the guardian/conservator and not later than every three years thereafter. At the time of the court review or at any other time the APS worker or any interested person including the individual adult may provide the court with information regarding the guardianship/conservatorship or may petition the court for any of the actions affecting the guardian/conservatorship.

A change in the guardian/conservator relationship may be indicated when the APS worker has reason to believe that the guardian is not acting in the best interest of the individual, i.e., misuse of the individual's money or refusing to authorize medical treatment critical to life.

In reviewing the guardian/conservator relationship, the APS worker must:

- Assess the individual's attitude toward the termination of guardian/conservatorship.
- Document contacts with the client indicating discussions with the client about the pros and cons of the guardian/conservatorship.
- Assess the client's functioning level, specifically indicating how the client's functioning level is different than it was at the original appointment of the guardian/conservatorship.

Any resulting recommended court action is not to be initiated until after updating the case record and obtaining supervisory approval.

Selection Of Persons To Serve As Agents

In referring persons or entities who may perform the service of representative payee, conservator, or some form of guardian the APS worker should consider the following characteristics:

- Sensitivity to the individual's (client's) wishes and needs without conflicting personal interests.
- Demonstrated or acknowledged integrity and trustworthiness in handling another's resources.
- Training or knowledge in financial matters or personal or health care.
- Physical availability and willingness to perform the functions necessary for the management of the adult's financial affairs.
- Emotional stability and functional dependability.

No adult (except for spouses) is responsible to provide assistance or financial aid to another adult. It may be difficult to find a suitable and capable person or organization willing to assume these responsibilities. Relatives and friends who have, in the past, shown an interest in the individual adult are possibilities.

Priorities in the Probate Code

For appointment of guardians and conservators, the probate code lists the following in priority of preference:

- A person designated by the individual adult.
- A spouse.
- An adult child.
- A parent.
- Other relative with whom the adult has resided for more than six months prior to the petition filing date.

- A person nominated by a person or agency providing care or benefits to the individual adult.

Nursing Homes as Agents

Neither nursing care facilities nor their staff may act as guardian or conservator for their patients, but they may act as representative payee for SSA benefits.

ADVOCACY AND PROTECTION OF RIGHTS

Under all circumstances, the APS worker must make efforts to ensure that the individual's privacy, personal and property rights are fully protected.

When other agencies or individuals are threatening the privacy, property or personal rights of an adult who is vulnerable, the MDHHS APS worker must intervene and assist the adult in asserting and protecting these rights. This intervention may be achieved by referring the individual to an advocacy or legal services organization such as those listed below:

- ARC of Michigan will assist adults with developmental disabilities through education, training, technical assistance and advocacy. 800-292-7851 or 517-487-5426.
- Disability Rights Michigan. will assist persons with any disability. Services include information, referrals, technical assistance and education, and direct representation including legal representation. 800-288-5923 or 517-487-1755.
- Elder Law of Michigan provides the following services to older adults:
 - Mid-America Pension Rights Project will assist retirees in finding and recovering pension benefits. 866-735-7737
- Local legal aid offices may be able to provide legal advice and representation to low-income persons. Contact information for each local legal aid office can be found in the business section of the local telephone directory under Legal Aid.

- Area Agencies on Aging can assist in identifying legal and non-legal resources for persons 60 years of age or older. Contact information can be found in the business section of the local telephone directory or through the Area Agencies Association of Michigan at 517-886-1029.

The APS worker must assist the adult, as needed, in contacting these organizations seeking legal representation or advocacy services. If another person is initiating inappropriate or unnecessary legal action on behalf of an adult and the APS worker has reasonable cause to believe that the result will be exploitation of or harm to the adult, the APS worker must intervene in that legal action. The APS worker may intervene, with supervisory approval, by communicating specific concerns and facts that act as the basis of those concerns to the appropriate persons:

- In case of a court petition for guardianship/conservatorship, the communication should be addressed to the court appointed legal counsel or guardian ad litem or to the adult's own legal counsel.
- In cases of involuntary civil admission, the communication should be addressed to the adult's legal counsel, if there is one, or to the judge hearing the case.
- In cases of exploitative power of attorney arrangements or when there is reasonable belief the adult is unable to make informed decisions or lacks the capacity to consent to a power of attorney, the department may petition the court for appointment of a conservator whose authority overrides any power of attorney or an order making the power of attorney agreement void, unless it is a durable power of attorney

LEGAL BASE

- Social Welfare Act, MCL 400.11b(6).
- Estates and Protected Individuals Code, MCL 700.5303 - 700.5319.
- Mental Health Code; MCL 330.1100a(21), MCL 330.1600 - 330.1644, MCL 330.1515 - 330.1522, MCL 330.1400 - 330.1410.
- Michigan Court Rules of 1985, MCR 2.002.