State of West Virginia Department of Human Services

Substitute Decision-Maker Policy

Bureau for Social Services

Revised May 2024

SECTION 1 - INTRODUCTION AND OVERVIEW

1.1 Mission, Vision, and Values

The Bureau for Social Services promotes the safety, permanency, and well-being of children and vulnerable adults, supporting individuals to succeed and strengthening families. Our vision is for all West Virginia families to experience safe, stable, healthy lives and thrive in the care of a loving family and community. Our values include professionalism, integrity, excellence, relationships, and staff contributions.

1.2 Introduction

Substitute decision-maker (SDM) policy sets forth the philosophical, legal, practice, and procedural issues which currently apply to substitute decision-making in West Virginia. This material is based upon a combination of requirements from various sources including but not limited to social work standards of practice, accepted theories and principles of practice relating to services for protected persons or incapacitated adults, West Virginia State Code, and case decisions made by the Supreme Court of Appeals of West Virginia.

1.3 Philosophical Principles

Adults have a constitutional right to live their lives as they see fit, within the confines of the law. Adult Protective Service (APS) workers uphold the right to self-determination of all clients. It is of the utmost importance to enhance capacity and allow protected persons and incapacitated adults to address their own needs. When working with adults, APS workers shall ensure that the adult's rights, as guaranteed under the Fourteenth Amendment of the United States Constitution and Article III of the West Virginia Constitution, are not infringed upon unnecessarily. Any intervention must be the least intrusive and least restrictive alternative that is appropriate to address the needs of the individual.

There are times when an adult may become incapacitated to the extent, they are no longer able to make decisions on their own behalf. When certain eligibility criteria are met, they may need a SDM to be appointed to make personal decisions on their behalf. All potential options shall be thoroughly explored prior to seeking appointment of a guardian, conservator, or health care surrogate (HCS), which will restrict the individual's constitutional rights to some degree. In addition, thorough exploration of the existence of advance directives such as a living will, medical power of attorney, durable power of attorney, etc. is to occur prior to accepting appointment of a HCS. Also, less intrusive alternatives to guardianship or conservatorship appointments should be considered including HCS (if assistance is only needed with health-related decisions), representative payee (if the income is a Social Security Administration benefit) and others.

A SDM may be appropriate when:

- The adult requires assistance with medical decisions.
- The adult has not designated anyone to assume decision-making for them, by execution of a durable power of attorney, or another advanced directive.

- The previously appointed SDM is not available.
- There is no known other advanced directive to provide guidance about medical care or other types of decisions.

1.4 Statutory Basis

The department as SDM is governed by W. Va. Code §16-30-1 *et seq*. and §44A-1 *et seq*. Excerpts from Chapters 16 and 44A regarding these obligations are included within this policy; however, reference should be made to the entire chapters and to the following chapters:

- Chapter 9- Human Services.
- Chapter 16- Public Health.
- Chapter 27- Mentally Ill Persons.
- Chapter 32- Uniform Securities Act.
- Chapter 39B-Uniform Power of Attorney Act.
- Chapter 44A – West Virginia Guardianship and Conservatorship Act.
- Chapter 48- Domestic Relations.
- Chapter 55- Actions, Suits, and Arbitrations.
- Chapter 61- Crimes and Their Punishments.

Guardianship Appointment

For a guardian to be appointed, a petition must be filed with the circuit court. If the court determines that the adult meets the definition as a *protected person* under the Guardianship and Conservatorship Act, a guardian may be appointed to assist the protected person with personal decisions. The authority of the guardian may extend to all personal decisions affecting the protected person or may be limited in scope or duration by the court. Adult protective services will pursue the least restrictive type of appointment appropriate to meet the individual's needs:

- Temporary guardian.
- Limited guardian.
- Full guardian.

The court may appoint the department as guardian where there is no one willing, able, and appropriate to serve in this capacity.

Guardians have a fiduciary duty to the protected person. A fiduciary duty means that a special relationship of trust, confidence, or responsibility exists. When the department is appointed to serve as guardian, this duty legally obligates the department to act in the best interest of the protected person.

When the assistance needed extends to decisions related to managing the protected person's financial affairs and estate, the court may appoint a conservator. The sheriff of the county in which the petition is filed is the entity designated to serve as conservator for a protected person in instances when a conservator is needed but there is no one who is willing, able, and appropriate to serve in this capacity. The department may not be appointed to act as conservator (W. Va. Code §44A-1-8). If a worker is present during a hearing where the department is ordered by the court to be conservator, the worker

must object, so the objection is noted in the court record. Immediately following the hearing/notification the worker needs to consult with their immediate supervisor. Consultation with legal counsel may be necessary for additional assistance.

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

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

Note: While the statute allows a guardian ad litem to be appointed for an individual under the age of 18 years old, this does not come under the jurisdiction of APS, unless the individual has been emancipated. Also, if the client has an appointed guardian and if their assets are not significant to warrant a conservator, a representative payee can be arranged to help assist with the individual's financial assets.

Health Care Surrogate Appointment

For a HCS to be appointed, a qualified physician, qualified psychologist, physician's assistant, or an advanced practice nurse must have determined that the individual is no longer able to make decisions on their own behalf. The authority of the HCS is limited to health care decisions affecting the individual. The department may be appointed to serve as HCS in instances where there is no one willing, able, and appropriate to serve in this capacity. When the department accepts appointment to serve as HCS, this duty obligates the department to act according to the person's wishes and in the best interest of the individual.

Note: *For persons with psychiatric mental illness, intellectual disability or addiction who have been determined by their attending physician or a qualified physician to be incapacitated, a second opinion by a qualified physician or qualified psychologist that the person is incapacitated is required before the attending physician is authorized to select a surrogate. The requirement for a second opinion does not apply in those instances in which the medical treatment to be rendered is not for the person's psychiatric mental illness.*

For additional information,refer to 4.10 Appointment of the Department as Health Care Surrogate.

1.5 General Definitions

Term	*Definition*
Advance directive	Mechanism used by individuals to make health care decisions prior to their potential incapacity. State law recognizes living wills, medical power of attorney and durable power of attorney that include provisions for making medical decisions as advance directives. See, W. Va. Code §44A-1-3 **Note:** APS staff are prohibited to assist with the completion of advance directives.
Advanced nurse Practitioner	A nurse with substantial theoretical knowledge in a specialized area of nursing practice and a proficient clinical utilization of the knowledge in implementing the nursing process and has met the applicable licensing requirements. See, W. Va. Code §16-30-3
Attending physician	A licensed physician who is selected by or assigned to the person and has the primary responsibility for treatment and care of the person. If more than one physician shares that responsibility, any of those physicians may act as the attending physician under this article. See, W. Va. Code §16-30-3
Comprehensive Child Welfare Information System (CCWIS)	The automated client information system used by the West Virginia Department of Human Services Bureau for Social Services.
Conservator	A person appointed by the circuit court who is responsible for managing the estate and financial affairs of a protected person. **Limited Conservator:** A person appointed by the circuit court who has only those responsibilities for managing the estate and financial affairs of a protected person, as specified in the order of appointment. **Temporary Conservator:** A person appointed by the circuit court who has only those responsibilities for managing the estate and financial affairs of a protected person, as specified in the order of appointment. A temporary conservator is time limited to six 6 months unless terminated or extended by the circuit court upon good cause following a hearing. See, W. Va. Code §44A-1-4
Defacto conservator	A person who is not the power of attorney representative or appointed surrogate and has assumed substantial responsibility for any portion of the estate and financial affairs of another person later found to be a protected person. See, W. Va. Code §44A-1-4

Durable power of attorney	A written, signed directive by a capacitated individual designating another person to act as their representative. The durable power of attorney specifies the areas in which this individual can exercise authority. A durable power of attorney will become effective or remain effective in the event the individual becomes disabled or incapacitated.
Emancipated minor	A child over the age of 16 who has been emancipated by: 1) Order of the court based on a determination that the child can provide for their physical well-being and has the ability to make decisions for themselves or 2) marriage of the child. An emancipated minor has all the privileges, rights and duties of an adult including the right to contract. See, W. Va. Code §49-4-115
Estate	Any real and personal property or any interest in the property and anything that may be the subject of ownership.
Fiduciary duty	Means that a special relation of trust, confidence, or responsibility exists. This duty legally obligates one entity/individual to act in the best interest of another. A guardian has a fiduciary relationship to a protected person.
Guardian	A person appointed by the circuit court who is responsible for the personal affairs of a protected person. **De facto Guardian:** A person who is not the medical power of attorney representative or appointed surrogate and has assumed substantial responsibility for any of the personal affairs of another person later found to be a protected person. **Limited Guardian:** A person appointed by the circuit court who has only those responsibilities for the personal affairs of a protected person, as specified in the order of appointment. **Temporary Guardian:** A person appointed by the circuit court who has only those responsibilities for the personal affairs of a protected person, as specified in the order of appointment. A temporary guardian may be appointed upon finding that an immediate need exists, that adherence to the procedures otherwise set forth in W. Va. Code §44A-1-4 for the appointment of a guardian may result in significant harm to the person that no other individual or entity appears to have the authority to act on behalf of the person, or that the individual or entity with authority to act is the individual or entity with authority to act is unwilling, unable or has ineffectively or improperly exercised the authority. A temporary guardian is time limited to 6 months unless terminated or extended by the circuit court upon good cause following a hearing. See, W. Va. Code §44A-1-4

Health care decision	A decision to give, withhold or withdraw informed consent to any type of health care, including, but not limited to, medical and surgical treatments, including life-prolonging interventions, psychiatric treatment, nursing care, hospitalization, treatment in a nursing home or other facility, home health care and organ or tissue donation. See, W. Va. Code §16-30-3
Health care facility	A facility including but not limited to hospitals, psychiatric hospitals, medical centers, ambulatory health care facilities, physician's offices and clinics, extended care facilities, nursing homes, rehabilitation centers, hospice, home health care and other facilities established to administer health care in its ordinary course of business practice. See, W. Va. Code §16-30-3
Health care provider	Any licensed physician, dentist, nurse, physician's assistant, paramedic, psychologist or other person providing medical dental or nursing, psychological or other health care services of any kind. See, W. Va. Code §16-30-3
Health care surrogate	An individual 18 years of age or older appointed or selected by an attending physician or advanced nurse practitioner to make medical decisions on behalf of an incapacitated individual. See, W. Va. Code §16-30-3
Incapacity	The inability because of physical or mental impairment to appreciate the nature and implications of a health care decision, to make an informed choice regarding the alternatives presented and to communicate that choice in an unambiguous manner. See, W. Va. Code §16-30-3
Interested person	An individual who is the subject of a guardianship or conservatorship proceeding; a guardian or conservator of a protected person; and any other person with an actual and substantial interest in the proceeding, either generally or as to a particular matter, as distinguished from a person who has only a nominal, formal, or technical interest in or connection with the proceeding. See, W. Va. Code §44A-1-4
Living will	A written, witnessed advanced directive governing the withholding or withdrawing of life prolonging intervention, voluntarily executed by a person in accordance with the provisions of W. Va. Code §16-30-4. See, W. Va. Code §16-30-3
Medical power of attorney	A written, witnessed advanced directive that authorizes an individual that is at least 18 years of age to make medical decisions on behalf of another individual. A medical power of attorney must be duly executed prior to the individual becoming incapacitated and duly executed in accordance with the provisions of W. Va. Code §16-30-6 or existing and executed in accordance with the laws of another state. See, W. Va. Code §16-30-3
Missing person	An adult individual, eighteen years of age or older, who is absent from his or her usual place of residence in the state and whose whereabouts are unknown for a period of six months or more. See, W. Va. Code §44A-1-4

Protected person	An adult individual, eighteen years of age or older, who has been found by a court, because of mental impairment, to be unable to receive and evaluate information effectively or to respond to people, events, and environments to such an extent that the individual lacks the capacity: (A) To meet the essential requirements for his or her health, care, safety, habilitation, or therapeutic needs without the assistance or protection of a guardian; or (B) to manage property or financial affairs or to provide for his or her support or for the support of legal dependents without the assistance or protection of a conservator. A finding that the individual displays poor judgment, alone, is not sufficient evidence that the individual is a protected person within the meaning of this subsection. "Protected person" also means a person whom a court has determined is a missing person. See, W. Va. Code §44A-1-4
Qualified physician	A physician licensed to practice medicine who has personally examined the person. See, W. Va. Code §16-30-3
Qualified psychologist	A psychologist licensed to practice psychology who has personally examined the person. See, W. Va. Code §16-30-3
Relative	Anyone having a relationship of a spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half-brother, half-sister or any person having a family-type relationship with the protected person or a family-type relationship created by adoption.
Representative payee	An individual appointed by the funding source to handle that individual's benefits.
Substitute decision-maker	A substitute decision-maker can be either a court appointed guardian or a health care surrogate.
Surrogate decision-maker	Means an individual identified as such by an attending physician in accordance with the Health Care Decisions Act. See, W. Va. Code §16-30-3

SECTION 2 - INTAKE

2.1 Eligibility Criteria

Guardianship

Any individual may contact the department to request guardianship services on the behalf of an individual they believe meets the definition of a protected person and has no one willing, able, or appropriate to serve in this manner. The department may assist an individual in the filing process for guardian or conservator. The following criteria are required for intake:

- At least 17 years, 10 months of age.
- A resident of West Virginia.
- Lack decision-making capacity or appear to have impaired decision-making capacity.
- Need assistance with personal decisions in areas not limited to health care decisions.

- Have no known advance directive duly executed and in effect or an advance directive is in effect, but it does not adequately meet the individual's needs; and,
- Have no known person who is willing, able, and appropriate to serve as guardian; however, an individual may have someone who is willing, able, and appropriate but needs assistance in filing the petition.

Health Care Surrogate

Any individual may contact the department to request HCS services on the behalf of an individual they believe is incapacitated to make medical decisions and has no one willing, able, or appropriate to serve in this manner. A medical professional must complete an evaluation and appoint the department, as a last resort. The following criteria are required for intake:

- At least 18 years of age.
- A resident of West Virginia or be physically located within the state.
- Have been determined by a qualified physician, qualified psychologist or advance practice nurse to lack decision-making capacity for a HCS appointment
- Have no known advance directive duly executed and in effect or an advance directive is in effect, but it does not adequately meet the individual's needs; and,
- Have no known person who is willing, able, and appropriate to serve as HCS.

While it is generally required that a physician obtain consent prior to providing medical care, there are exceptions, such as emergency situations (W. Va. Code §16-4C-2). Consent is presumed in an emergency when there is an immediate threat to the patient's life, sight, or limb, unless the patient indicated that they do not want the procedure or treatment in a previously executed advance directive. When this is the situation, emergency care may be provided without consent, so immediate appointment of a health care surrogate is not necessary. The hospital is to follow their internal procedures for providing medical treatment in emergency situations. In these instances, the department should decline appointments to address the emergency medical need. This would not preclude the department from accepting appointment after all other prospective decision-makers have been contacted and it has been determined that there is no one willing, able, and appropriate to serve. If the situation does not qualify as a true emergency as defined above, the hospital or doctor is to follow the required process of attempting to identify and appoint an appropriate surrogate. It is the department's responsibility to ensure that proper procedures are followed prior to accepting appointment as HCS.

2.2 Relationship to Other Department Social Services

The department may serve in more than one role in a client's life. For more information view *Adult Protective Services policy, Foster Care policy, Homeless Services policy, or Adult Residential Services policy.*

2.3 Information Gathering

The individual identified as the alleged protected person or incapacitated adult in the intake process will become the case reference person in CCWIS. At a minimum, the following information must be gathered during the intake process and documented in CCWIS.

Information that must be collected when a guardianship or HCS referral is received for an individual includes the following:

- Name of adult.
- County of residence.
- Current location of the adult.
- Age/date of birth.
- Name of the facility (if applicable).
- Contact person at the facility (if applicable).
- Address of the adult's home or facility.
- Phone number for the adult.
- Type of facility.
- Directions to the home or facility.
- Name(s) and address of all known individuals who may be able, willing, and appropriate to serve as SDM.
- Name(s) and address' of all known individuals who are currently serving in a decision-making capacity.
- Other individuals involved in or who have knowledge of the adult's circumstances.
- Information about any existing advance directives, if known.
- Physical description of the adult.
- Psychological description of the adult.
- Name of referent or indication that referral was made anonymously if the referent is unwilling to give their name.
- Referent address and telephone number.
- Relationship of the referent to the adult.
- How the referent knows of the information being reported and client's needs; and,
- Any other relevant information.

When all referral information is gathered and documented in CCWIS, a search of the CCWIS system must be completed to determine if there are other referrals, assessments, and cases for the identified client. The worker must associate intakes, cases, and merge client IDs. The completed referral is forwarded to the appropriate APS supervisor for further action.

2.4 Referral Disposition and Response Times

The supervisor is the primary decision-maker at the intake stage of the SDM casework process. The supervisor's role includes:

- Ensuring that all referrals are appropriately considered to determine if the referral is to be assigned for an adult services assessment or screened out; and,
- For those assigned for assessment, determining the required response time for the initial contact based on the degree of risk indicated in the referral information. Screening of the referral is to be done promptly.

The supervisor will:

- Review the information collected at intake for thoroughness and completeness.
- Identify and verify the type of referral.
- If not previously completed by the intake worker, conduct a search of the CCWIS system to determine if other referrals, assessments, or cases already exist for the identified client.
- Create associations in CCWIS between the current referral and other referrals, assessments, investigations, and cases as appropriate, as well as merging all duplicate client ID numbers.
- Determine if the referral will be accepted for an adult services assessment or if the referral will be screened out and not accepted. In determining whether to accept or screen out the referral, the supervisor must consider:
    - The presence of factors which present a risk to the adult.
    - The information related to the identified client and their current circumstances.
    - Whether the information collected appears to meet the eligibility criteria for SDM services.
    - The sufficiency of information to locate the individual or family; and,
    - The motives and truthfulness of the reporter. If a referral is received through Centralized Intake (CI), the CCWIS system will not allow them to transfer the intake to the county inbox without approving and accepting the referral first. The APS supervisor has the ability to override the decision if criteria are not met. Centralized Intake does not formally screen these referrals.

If the referral is accepted:

- Determine the appropriate response time for the referral based on the information presented on the intake.
- Assign the referral for assessment.
- If the referral is screened out:
    - Document the decision regarding screening.
    - Document the reason(s) for the screen-out decision; and,
    - Make referrals to other resources within and outside of the department, if appropriate.

Response Times

A face-to-face contact must be made with the alleged protected person or incapacitated adult within the assigned time frame. Contact is to occur in the adult's usual living environment whenever possible. The following are response times:

- **Within 5 Days**: This time frame will apply in cases where it is determined that, based on the referral information, a situation where a prompt response is critical (A situation or set of circumstances which present a substantial and immediate risk to the adult). A face-to-face contact with the alleged protected person or incapacitated adult must be initiated within 5 days.
- **Within 14 Days**: This time frame will apply in cases where it is determined that, based on the referral information, a situation where a prompt response is critical does not currently exist or is

not expected to develop without immediate intervention. A face-to-face contact with the adult must be initiated within 14 days.

If *Time Critical Need* is selected by the intake worker, CCWIS will trigger a response time of *5 days*. If this is not selected by the intake worker, the response time will default to the *within 14 days* response time. The supervisor can change the response time recommended by the worker if this is done prior to the supervisor's approval of the intake.

Considerations in Determining Response Time

In determining the appropriate response time, the supervisor should consider the following:

- The information reported indicates the need for an expedited response.
- The alleged protected person has decisional capacity.
- The location of the adult at the time the intake is received.
- The impact of intervention.
- If the circumstances that exist could change rapidly.
- The living arrangements are life threatening or place the adult at risk.
- The adult requires medical attention.
- The adult is without needed assistance or supervision.
- If the adult is capable of self-preservation and protection.
- The adult is isolated socially or geographically.
- There are indications of family or domestic violence.
- The adult and family is transient or new to the community.
- The adult is currently connected to any formal support system.
- There are any family or friends available for support.
- There is a caregiver, and if so, are they physically, cognitively and emotionally able to provide needed care to the adult.
- There is a past history of referrals or current referrals requesting assistance.
- There are injuries.
- Once the supervisor has made a determination regarding the response time they will:
    - Document the decision in CCWIS indicating the selected response time and the date of this decision.
    - Assign the referral to an APS worker to begin the adult services assessment; and,
    - Follow-up to assure that the assigned worker adhered to the designated response time.

2.5 Reported Missing Person

Any time a missing person is reported to adult services, the worker must immediately contact the West Virginia State Police and supply them with all necessary information including a recent photograph and information related to the missing individual's electronic communication devices or electronic accounts, such as cell phone numbers, social networking login information, and email addresses and login information. Workers shall maintain annual photographs for all clients for whom the department serves as SDM.

SECTION 3 - ADULT SERVICES ASSESSMENT

3.1 Introduction

The adult services assessment is the gathering of information to determine if an adult lacks decision-making capacity or appears to meet the definition of a protected person and is in need of a SDM.

When a referral is received and there is missing information, such as name, last known address, birth date, or other information etc., and the worker learns any of this information at any time, this information must be documented in CCWIS.

3.2 Timeframes

Time frames for initiation of the adult services assessment are determined by the supervisor. It is critical that the worker completes a face-to-face contact within the assigned time frame. This contact is to be documented in CCWIS within three business days of completion of the contact. Documentation is to be pertinent and relevant to carrying out the activities necessary to complete the assessment.
The adult services assessment, including all applicable documentation in CCWIS, must be completed within 30 calendar days.

Extension

Due to the critical nature of SDM services, it is essential that face-to-face contact with the alleged protected person or incapacitated adult be made by the worker within the response time assigned by the supervisor. No extensions will be granted for the face-to-face contact beyond the assigned time frame. In unique situations, extenuating circumstances may exist that prevent the worker from meeting the applicable time frames for completion of the adult services assessment within the allotted 30 days. If additional time is necessary, in these rare situations, the worker must request an extension on the policy exception screen. This request must be submitted to the supervisor prior to the end of the 30 day period for completion of the assessment. At a minimum, this request must clearly state the following:

- Explanation of why the assigned time frame cannot be met.
- Statement of the extenuating circumstances that exist; and,
- Estimation of the amount of additional time required (not to exceed 14 calendar days).

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

3.3 Information Gathering

Information is to be gathered by conducting a series of interviews. Interviews should be conducted with the following to gain enough information to make a qualified and informed decision. At a minimum, the worker must interview:

- The client.
- Caregiver (if applicable).
- Potential SDM.
- Others' having knowledge of the situation.

Information gathered during the assessment will be focused on determining the following:

- The level of risk the client's circumstances presents to their well-being and safety.
- If SDM services are indicated.
- If SDM services are not indicated, what other services may be needed.
- The availability of persons willing, able, and appropriate to serve as SDM; and,
- The role the department is to play beyond the assessment.

Critical information to determine if the SDM program type is to be opened or closed includes the following:

- Is the alleged protected person or incapacitated adult safe or can their safety be arranged or assured through available resources? (Resources include financial, social, familial, etc.).
- Does the alleged protected person appear to have or lack decision-making capacity?
- What type of decisions does the alleged protected person need assistance with? (health care only, some or all personal, some or all financial).
- How long is it anticipated that the alleged protected person or incapacitated adult would need assistance with decisions?
- Does the alleged protected person have an acting SDM?
- Does the adult have any advance directive in effect?
- If SDM services will not be provided, are referrals to other resources needed?

Identifying Information

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

- Address (mailing and residence).
- Date of birth/age.
- Household members.
- Other significant individuals.
- Current legal representatives/substitute decision-makers (if applicable).
- Potential decision-makers and indication of their willingness to serve.
- Identification numbers (SSN, Medicaid, Medicare, SSA Claim, etc.).
- Gender.
- Race and ethnicity.
- Marital status.
- Advance directives in effect.
- Directions to the home; and,

- A photograph of the client to be updated annually and at the time of significant changes to physical appearance will be uploaded into CCWIS. The client's permission for the photograph shall be obtained.

Services Requested

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

- The specific type(s) of assistance being requested.
- Why assistance is being requested; and,
- How are needs currently being met?

Living Arrangements

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

- Client's current location (own home, relative's home, hospital, etc.).
- Is this setting considered permanent or temporary?
- Type of setting (private home or residential facility).
- Household and /family composition.
- Physical description of residence (single family dwelling, duplex, townhouse, apartment, retirement community, foster home, group home, nursing facility, etc.).
- Interior and exterior condition of the residence.
- Type of geographic area (rural, urban, suburban, etc.); and,
- Access to resources such as family or friends, transportation, shopping, medical care and services, social and recreational, religious affiliations, and any others,etc.

Client Functioning

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

- Activities of daily living (ADL).
- Whether or not their needs are currently being met and by whom.
- Caregiver functioning, if applicable.
- Ability to manage finances.
- Ability to manage personal affairs.
- Ability to make and understand medical decisions; and,
- Assessment of decision-making capacity.

Physical Health and Medical Information

Documentation of information about the client's current physical and medical conditions should include a description of the client as observed by the worker during face-to-face contact, and information about their diagnosed health status. Included are areas such as:

- Observed and reported physical conditions of the client.

- Primary care physician.
- Diagnosed health conditions.
- Current medications.
- Durable medical equipment supplies used or /needed; and,
- Nutritional status.

Mental and Emotional Health

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

- Current treatment status.
- Diagnosed mental health condition.
- Current mental health provider, if applicable.
- Mental health services currently receiving.
- Medication prescribed for treatment of a mental health condition.
- Observed and reported mental health and behavioral conditions; and,
- Mental health treatment history.

Financial Information

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

- Financial resources - type and amount.
- Other resources available to the client, non - financial.
- Assets available to the client.
- Health insurance coverage.
- Life insurance coverage.
- Pre-need burial agreement in effect.
- Information about client's ability to manage their own finances.
- Outstanding debts and expenses.
- Court ordered obligation for child support or /alimony; and,
- How and by whom finances are managed if the client is unable to do so.

Educational and Vocational Information

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

- Last grade completed.
- Field of study.
- History of college attendance and graduation.
- History of special licensure or training; and,
- Current educational and training needs.

Employment Information

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

- Current employment status.
- Current employer.
- Prior employment history; and,
- Current employment needs.

Military Information

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

- Branch of service.
- Type of discharge received.
- Service-related disability, if applicable; and,
- Veteran eligibility for benefits (contact the local veteran representative).

Legal Information

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

- Opinion of client's decision-making capacity by the worker.
- Information about legal determination of capacity, if applicable.
- Information about efforts to have client's decision-making capacity formally evaluated; and,
- Identification of specific individuals who assist the client with decision-making.

3.4 Decision-Making Capacity

Based on the information gathered during the assessment, the worker is to determine if the client appears to have the capacity to make independent decisions, understand the consequences of those decisions, and to act on these decisions to meet their needs. The worker's opinion of the client's decision-making capacity is to be documented in CCWIS. If the worker believes that the client lacks decision-making capacity, the reason for this conclusion must also be documented. Documentation must include information regarding a legal determination of incapacity, if applicable, or worker observations if there is no indication of a legal determination. Observations may include but are not limited to physical, medical, and emotional conditions as well as orientation to time, place, person, and situation.

The need for a HCS also requires written documentation, completed by the appropriate medical professional. The documentation must be obtained during the assessment phase verifying that the client lacks the capacity to independently make health care decisions. The APS worker will provide copies of the HCS form to any treating medical professional.

Determinations of capacity, including determinations that a person has regained capacity, are governed by W. Va Code §16-30-7, which requires only one medical professional (attending physician, qualified physician, qualified psychologist, or an advanced nurse practitioner who has personally examined the person) to make such determination. The general rule of determining capacity could therefore be stated that it takes only one medical professional to make a determination of capacity, and it takes only one medical professional to make a determination that an individual has regained capacity. The exceptions to this general rule include the following scenarios where capacity determinations of two medical professional are required:

- Under W. Va Code §16-30-22(c) where a person has been determined to be incapacitated and his or her living will or medical power of attorney has become effective, any health care provider or health care facility which refuses to follow the person's directives in the living will or medical power of attorney or the decisions of the medical power of attorney representative or HCS, because the principal has asked the provider or facility not to follow such directions or decisions, shall have two physicians, one of whom may be the attending physician, or one physician and a qualified psychologist, or one physician and an advanced nurse practitioner certify that the person has regained capacity to make the request; and,
- Under W. Va Code §16-30-24 for persons with psychiatric mental illness, intellectual disability or addiction who have been determined by their attending physician or a qualified physician to be incapacitated, a second opinion by a qualified physician or qualified psychologist that the person is incapacitated is required before the attending physician is authorized to select a surrogate. The requirement for a second opinion does not apply in those instances in which the medical treatment to be rendered is not for the person's psychiatric mental illness.

3.5 Risk Status

A critical component of the assessment process is determining if the alleged protected person or incapacitated adult is at risk of injury or harm. This determination is made based on the client's circumstances, reported on the referral and observed during the assessment. Examples of circumstances that may exist that could be an indication of risk, include the following:

- No established residence.
- Inadequate or substandard housing.
- Suicidal gestures or statements.
- Self-endangering behavior.
- Violent or physically aggressive.
- Confused or disoriented.
- Wandering.
- Substance use.
- Behaviors that provoke a serious reaction from others.
- Peer relationships reinforce or promote problematic behaviors.
- Client's behavior is a threat to self or others.
- Level of ability to perform activities of daily living.
- Family members are violent to each other; and,

- Lack of support system.

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

3.6 Adult Services Assessment Disposition

Guardianship

For a guardianship case to be opened, the adult must meet the criteria in either below:
If the department is planning to petition for appointment of a Guardian the client must:

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

OR

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

- Be at least 17 years, 10 months of age.
- Be a West Virginia resident.
- Lack decision-making capacity as determined by a physician orpsychologist's evaluation, or appear to have impaired decision-making capacity which shall be evaluated by a /physician or psychologist.
- Have one or more person who is willing, able, and appropriate to serve as guardian and/or conservator; and,
- Have an interested person who is preparing to file a petition for appointment of a guardian and or conservator with the department's assistance. The intent in this situation is that the department will not be appointed, however, this is ultimately the court's decision.

If an individual only needs information and general guidance about where and how to file a petition, the assessment may be closed after the information is provided. It is not necessary to open a guardianship case in this situation; however, if the person needs significant assistance and guidance throughout the petitioning and court process, a guardianship case should be opened.

Health Care Surrogate

When the department receives a request to serve as HCS, the worker must thoroughly explore all individuals who may be able to serve in this capacity. This exploration is to include receipt and review of information documented on the HCS form about individuals who were previously contacted by the appointing medical professional to serve and the outcomes of those contacts. Any potential candidate is to be contacted by the medical professional prior to requesting appointment of the department. Until written documentation is received and reviewed, the department is not to accept appointments as HCS. If there is any available candidate(s) who is willing, able, and appropriate to serve, the department should encourage them to accept the appointment rather than the department being appointed. The department should not accept the appointment as HCS if there is an appropriate candidate who is willing and able to serve.

W. Va. Code §16-30-8 specifies the individuals who are to be considered for appointment and the order of priority for consideration. The department is not to be appointed until all potential candidates have been contacted. Individuals who are to be considered prior to appointment of the department are:

- Spouse.
- Adult children.
- Parent(s).
- Adult siblings.
- Adult grandchildren.
- Close friends; and,
- Any other person or entity, including but not limited to public agencies, public guardians, public officials, public and private corporations and other persons or entities which the department may from time to time designate.

Parties who may NOT serve as a HCS include:

- The treating health care provider of the individual.
- Employees of the treating health care provider, not related to the individual.
- Owner, operator or administrator of a healthcare facility serving the individual; and,
- Employees of the owner, operator or administrator of a healthcare facility, not related to the individual.

For a HCS case to be opened, the adult must have been determined to meet the following criteria:

- Be at least 18 years of age.
- Be a resident of West Virginia or physically located within the state.
- Have been determined by an attending physician, qualified physician, qualified psychologist, physician's assistant, or advance practice nurse to lack decision-making capacity.
- Need assistance with health care decisions.
- Have no known advance directive duly executed and in effect or an advance directive is in effect, but it does not adequately meet the individuals needs.
- Have no known person who is willing, able, and appropriate to serve as HCS.

- Have been determined by a qualified physician or advance practice nurse to be in need of a HCS and have appointed the department to serve; and,
- Receipt by the department of the completed HCS appointment form, which includes written verification of potential surrogates who were contacted prior to appointing the department and the results of those contacts.

The following requirements apply regarding disposition of SDM assessments:

- If the client meets all the eligibility criteria and the department will be filing for appointment of a guardian, or if the client meets all the eligibility criteria and the department will be accepting appointment as HCS, the case MUST be opened for SDM services.
- If the worker is unable to complete an adult services assessment for a legitimate reason (death of client, unable to locate, moved out of state) it should be recorded as an incomplete assessment in CCWIS, and the worker shall request a policy exception.
- If the department is able to identify an individual who is willing, able, and appropriate to serve as HCS during the course of completing the assessment, the assessment is to be completed and then closed without opening a case.

At the conclusion of the adult service assessment, the worker will then submit the assessment, along with their recommendation about disposition of the assessment, to the supervisor for approval. The possible dispositions and case decisions available are:

- Close adult services.
- Close adult services, refer to community services.
- Open ARS.
- Open adult guardianship.
- Open HCS.
- Open homeless services.
- Open unclaimed deceased adult body.
- Continue ARS.
- Continue adult guardianship.
- Continue HCS; and
- Continue unclaimed deceased adult body.

The disposition shall be based on all the information gathered during completion of the assessment. From this information, the worker will determine eligibility of the client for SDM services provided by the department. Notification of the disposition is to be provided to the requester of services and the client by completion of the Notification of Application for Social Services (SS-13) and uploaded in CCWIS.

3.7 Assessment Prior to Case Closure

An adult service assessment must be completed as part of the case review process prior to closure of the SDM case. Upon completion of the final review, the worker must document the results of this review in CCWIS and submit to the supervisor for approval of recommendation for case closure. Upon supervisory

approval, the case is to be closed for HCS services. Prior to closing a guardianship case, a final report to the court is to be completed, notarized and uploaded into CCWIS along with a copy of the death certificate if the client has passed away. This will need to be submitted to the appropriate circuit clerk's office for each case. Case closure in CCWIS is to be completed promptly but no later than 30 days following completion of the final evaluation and review.

Note: It is essential that all documentation in the case be completed prior to closure of the case, including but not limited to the end dating of all tasks on the case plan.

SECTION 4 - APPOINTMENT PROCESS

4.1 Guardianship Petition Process

The Petitioner for Guardianship

For a guardianship case any interested person, including the department, may file a petition to request the appointment of a guardian or conservator. Refer to *Legal Requirements and Processes* policy for this information.

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

There are provisions in the statute to permit the filing of a petition for appointment of a guardian or conservator prior to an individual reaching the age of 18. See *Foster Care* policy for more information.

Explore all Potential Guardians Prior to the Department Filing a Petition

Whenever the department receives a request to serve as guardian or to file a petition for the appointment of a guardian or conservator, the worker must thoroughly explore all individuals who may be able to serve in this capacity. If there is any available candidate(s) who is willing, able, and appropriate to serve, the department should encourage them to petition and assist them with the petitioning process, if this is necessary. The department should not file a petition for the department to be appointed guardian if there is a candidate who is willing, able, and appropriate to serve.

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

Completing the Petitioning Process

When the department is the petitioner for the appointment of a guardian, the worker must file a petition for appointment of a conservator/guardian where the individual resides. If the alleged protected person is in a healthcare facility or in a correctional facility, the petition is to be filed in the county where the facility is located. The documents listed below are available on W. Va. courts website. The following must be filed:

- *Petition for the Appointment of a Conservator/Guardian.*

- *Evaluation Report of a Licensed Physician/Psychologist*, if this is available at the time of filing.
- If the *Evaluation Report* is not available at filing, submit a *Motion For Leave to File Petition Without Evaluation Report* when the petition is filed. If this option is used, the *Evaluation Report* must be completed and filed with the Circuit Clerk and a copy provided to the attorney for the alleged protected person prior to the hearing date.
- *Affidavit of Physician* if the alleged protected person is unable to attend due to medical reasons.
- *Statement of Financial Resources* if a conservator is to be appointed.
- *Affidavit Certifying Completion of Mandated Education*.
- Attach other applicable documents, as available, such as medical power of attorney, durable power of attorney, health care surrogate appointment, living will, and any others.
- File all the above items with the circuit clerk's office in the county where the alleged protected person resides.
- Arrange for payment of the filing fee. If the alleged protected person has sufficient resources the worker should submit a request to the court for reimbursement from the estate for costs associated with filing the guardianship petition.
- Arrange for notice of hearing to be sent or served to required parties once a hearing date has been set; and,
- Attend hearing.

All the forms referenced in the above section are available at the West Virginia Supreme Court website.

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

Contents of the Petition

When a petition for the appointment of a guardian or conservator is filed it must contain certain information about the individuals who are involved, including the alleged protected person, the petitioner, and other potential candidates for guardian or conservator. Refer to *Legal Requirements and Processes Policy* for more detailed information.

4.2 Fees and Costs

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

Fees Associated with Filing a Petition

The Bureau for Social Services pays for certain limited expenses associated with petitioning the court for appointment of a guardian. When the department is the petitioner, the following fees may be required and are to be submitted along with the petition when filed:

- Filing fee- established by statute.
- Fees associated with service of process- varies from one jurisdiction to another; and,

- Fees for certified mail for required notification of parties.

Process for Filing Fees

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

- Worker requests a DF-67 (transmittal form) from the local financial clerk.
- Worker completes DF-67 and submits to the supervisor for approval.
- Submit completed, approved DF-67 to the circuit clerk and obtain circuit clerk's signature on DF-67 and an invoice.
- Return signed documents to the local financial clerk who will write the check.
- Attach the check to the petition and other required documents and file with the circuit clerk.
- Upon filing the petition, worker will obtain itemized receipt for fees paid; and,
- Complete a demand payment in CCWIS for applicable fees, payable to the local general assistance account, to reimburse this account for funds expended.

This is the established procedure to ensure reimbursement to the local general assistance account. There may be some variation to this procedure from one district to another. The worker or financial clerk may enter the demand payment request. These payments need to be completed within six months of the petitions filing date.

Other Demand Payments

There are certain other limited costs that may be paid when necessary and not covered by any other source. These are not routine costs associated with the petitioning process but may be paid in rare instances, and only when they are required and not covered by another source. These will be paid as a demand payment. Payments in this group are only available to guardianship cases and include:

- Expert testimony.
- Medical evaluation (annual physical, psychological and/or psychiatric evaluations).
- Court reporter fee.
- Copies of court transcripts and related documents.
- Transportation.
- Interpreter; and,
- Birth and death certificates.

These types of demand payments are to be entered as a regular adult services demand payment. The worker must include a clear explanation about why the payment is necessary, efforts to explore other funding sources, and other relevant information to justify the request. The worker must have the provider connected in case services in CCWIS for payment to be made. The request must then be submitted to the supervisor for approval. Once supervisory approval is granted, the supervisor will forward to the program manager. All payments must be completed within six months. Before payment is made, all other resources must be exhausted prior to the department making payment. The department is to only pay the medicaid rate for medical associated costs. There are certain payment types that guardianship clients are not eligible for. These include:

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

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

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

4.3 Prior to Hearing

Notification to Parties

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

- The alleged protected person; and,
- All other parties named in the petition, seven years of age or older.

The alleged protected person must be personally served with the *Notice of Hearing*, a copy of the petition, and the evaluation report NO LESS than 14 calendar days prior to the hearing. Other parties named in the petition must be notified by certified mail with a return receipt requested. This notification is to be mailed at a minimum of 14 calendar days prior to the hearing date and is to include the *Notice of Hearing* and a copy of the petition. The worker will need to maintain documentation of certified mail for the paper file. The worker shall enter contacts in CCWIS when sending notification.

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

Responsibility of the Worker - Prior to the Hearing

The West Virginia Guardian / Conservator Online Training Tutorial is designed to provide education to an individual who is undertaking the responsibilities of being appointed by the court to serve as a guardian or conservator or both. This required educational training must be completed within 30 days of the court's determination that there is a protected person. The training requirement has a 3-year term, which means that every 3 years, APS workers and supervisors must complete the mandatory education training. Workers shall file the *Affidavit Certifying Completion of Mandated Education* along with

new Guardianship petitions and related documents.

- Complete adult services assessment - within 30 days of receipt of referral.
- Determine if it is appropriate for the department to file a petition.
- If the department is filing a petition, open the case in CCWIS to access court screens.
- Complete all necessary forms to file a petition.
- Arrange for all required notifications.
- Complete all documentation in CCWIS.
- Request legal representation for the department from either the legal counsel for adult services or the prosecuting attorney.
- Submit petition to supervisor for approval.
- Arrange for payment of applicable fees.
- Upon approval of the petition by the supervisor and arrangement for payment of fees, file the petition with the circuit clerk.
- Arrange for witnesses to be present/subpoenaed; and,
- Arrange for the alleged protected person's presence during the hearing.

The tasks generally are listed in the order in which the worker would complete them; however, there may be some that will be completed simultaneously, such as in a situation where an emergency situation exists and the petition must be filed immediately. The worker may be completing the adult services assessment and preparation of the petition at the same tim*e.*

Responsibility of the Supervisor - Prior to the Hearing

- Review and approve adult services assessment.
- Review and approve court petitions and other court documents if the department is filing a petition.
- Approve case connect in CCWIS, if a case is to be opened; and,
- Review and approve completed case plan.

Responsibility of the Court - Prior to the Hearing

- Appointment of legal counsel for the alleged protected person; and,
- Set a hearing date.

Setting the Hearing

The hearing is to take place within 60 days of filing the petition and the evaluation report. Upon filing of the petition, the Circuit Clerk is required to set the hearing date. The hearing is to occur within the 60 daytime frame The Circuit Clerk is to notify the petitioner of the hearing date.

4.4 Guardianship Appointment

W. Va. Code §44A-1-8 identifies who may and may not be appointed to serve as guardian for a protected person. Refer to *Legal Requirements and Processes policy* for this information.

Appealing an Appointment

An appointment of the department may be appealed in certain circumstances. Refer to *Legal Requirements and Processes policy* for situations when an appeal may be appropriate.

4.5 Responsibility of the Worker

During the Hearing

- Ensure attendance at the hearing of the alleged protected person or, provide evidence that the individual refuses to appear.
- Present case to the court, if not represented by counsel.
- If the department objects to all or part of an appointment, state the objection during the hearing so it becomes part of the court record; and,
- If in question, request that the court clarify the parameters of the appointee's authority.

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

4.6 Responsibility of the Court

During the Hearing

- Determine if the individual meets the definition of a protected person.
- Determine if a guardian or conservator should be appointed.
- Determine the type of guardian or conservator and the specific areas of protection, management, and assistance to be granted.
- Consider the suitability of the proposed guardian or conservator, the limitations of the alleged protected person, the development of the person's maximum self- reliance and independence, the availability of less restrictive alternatives including advance directives and the extent to which it is necessary to protect the person from neglect, exploitation, and abuse; and,
- Select the individual or entity best qualified to act in the best interest of the protected person, after consideration of the proposed guardian or conservator's geographic location, familial or other relationship with such person, ability to carry out the powers and duties of the office, commitment to promoting such person's welfare, any potential conflicts of interest, the criminal history of the proposed guardian or conservator and the recommendations of the spouse, the parents, children or other interested relatives, whether made by will or otherwise. The court may order a background check to be conducted by the state police or county sheriff on any person being considered by the court for appointment as a guardian or conservator, W. Va. Code §44A-1-8.

4.7 Types of Guardian Appointments

The following are types of guardianships that the court can appoint for an alleged protected person based on the needs of the individual.

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

- Limited Guardian- A guardian appointed by the court who has only those responsibilities for the personal affairs of a protected person, as specified in the order of appointment.
- Temporary Guardian- A guardian appointed by the circuit court who has only those responsibilities for the personal affairs of a protected person, as specified in the order of appointment. A temporary guardian may be appointed upon finding that an immediate need exists, that adherence to the procedures otherwise set forth in W. Va. Code §44A-2-14 for the appointment of a guardian may result in significant harm to the person that no other individual or entity appears to have the authority to act on behalf of the person, or that the individual or entity with authority to act is unwilling, unable or has ineffectively or improperly exercised the authority. A temporary guardian is time limited to six months unless terminated or extended by the circuit court upon good cause following a hearing.

4.8 Court Requests for Studies of Potential Guardians

It is the responsibility of the court to determine, based on the information presented during the hearing, if there is an appropriate person who is willing, able, and appropriate to serve and if there is more than one potential candidate, to determine the best candidate. In situations where the department is not the petitioner and has no prior knowledge or involvement of the case, it is not the role of the department to determine the best candidate. When there is more than one potential candidate and two or more of these individuals are interested in serving, the court may order the department to complete a study on each potential candidate and make a recommendation as to who would be the best candidate. If the department is present during a hearing where the department is ordered by the court to complete a study under these circumstances or any other request that does not coincide with the department's responsibility, the department should object during the hearing, so the objection is noted in the court record. Immediately following the hearing, the legal counsel for adult services is to be notified.

If the department is not present during a hearing where the department is ordered by the court to complete a study under these circumstances, the worker should contact their supervisor to request assistance immediately with the legal counsel for adult services upon receipt of the court order requiring the department to conduct the study.

4.9 Post Guardianship Appointment

Notification to Required Parties Following Appointment

The appointee is responsible for providing notice to all required parties. Refer to *Legal Requirements and Processes Policy* for this information.

Reports to the Court

The APS worker is responsible to complete a court report six months after appointment, one year after the appointment, and annually after that. Some jurisdictions require the report on the anniversary of the appointment, and others require reports to be completed by the end of the calendar year. Refer to *Legal Requirements and Processes Policy* for Reports to the Court.

Responsibility of the Worker - Following the hearing

- Within 14 days following the entry of the order of appointment, mail a copy of the order or appointment and statement advising the recipient of their right to appeal to all parties named in the original petition.
- Review the order of appointment.
- Prepare a petition for modification of the order of appointment, if applicable.
- Prepare and submit the initial report to the court within six months following the appointment; and,
- Preparation and submission of the annual report to the court.

Responsibility of the Supervisor - Following the Hearing

- Review the order of appointment; and,
- Ensure submission of modification of the order of appointment, if applicable.

Responsibility of the Court - Following the Hearing

- Issue and enter the order of appointment.

Note: The order of appointment is to be signed and filed within 7 days, if the hearing is before the circuit judge, and within 14 days if the hearing is before the mental hygiene commissioner.

Following an Application Requesting Access to the Protected Person

This section applies only in respect to relatives who have been granted access to a protected person by petition process. The guardian shall notify relative(s) with court approved access if:

- The protected person is admitted to a medical facility for acute care for a period of three or more days.
- The residence has changed.
- The protected person is staying at a location other than their usual residence for a period that exceeds two calendar weeks.
- At the protected person's death to allow the family to complete funeral arrangements; and,
- The location of the protected person's final resting place shall be provided.

Note: A relative entitled to notice about a protected person under this section may waive notice by providing a written request to that effect to the guardian. A guardian shall file any such written request received with the court.

4.10 Appointment of the Department as Health Care Surrogate

Appointment of a HCS must be made by a qualified physician or advanced nurse practitioner who has personally examined the adult and determined that they lack the capacity to make healthcare decisions on their own behalf. W. Va. Code §16-30-8 identifies the individuals who may be considered to be appointed in priority order. The department may be appointed only if there is no one else who is able, willing, and appropriate to serve as HCS.

For persons who are in need of treatment for mental illness or addiction, as opposed to treatment of physical needs, who have been determined by their attending physician or a qualified physician to be incapacitated, a second opinion by a qualified physician or psychologist that the person is incapacitated is required before the attending physician is authorized to select a surrogate.

If the adult has one or more advance directive in effect that adequately addresses their decision-making needs, it is NOT appropriate for the department to be appointed HCS. If it is believed that the designated decision-maker(s) is not adequately addressing the adult's decision-making needs, it may be appropriate to explore the appointment of an alternate decision-maker. If so, the reason(s) for seeking a change in decision-maker must be clearly documented. It may be appropriate for the appointing medical professional to seek appointment of another decision-maker if:

- The current decision-maker is no longer physically/mentally able to carry out their responsibilities.
- The current decision-maker is not acting in the best interest of the adult; or,
- The adult's decision-making needs cannot be met by appointment of only a Health Care Surrogate.

It is NOT appropriate to seek an alternate decision-maker solely because the physician or other family members are not in agreement with decisions made by the authorized decision-maker. Whenever there are disagreements among family members, decision-makers, or others, the physician is to arbitrate to reach a solution.

- A HCS's authority ends at death, therefore the department must oppose a request for HCS appointment of an individual who has passed or is clinically determined brain-dead (W. Va Code §16-10-1). Unless to consent to:
    - An autopsy.
    - Funeral arrangements or cremation.
    - Organ donation. W. Va Code §16-30-6(d).

West Virginia state code allows for someone to challenge the appointment of a HCS if they feel that the appointment is not appropriate AND they are a person who is ranked as a possible surrogate on the selection list. To challenge the appointment, the person may seek injunctive relief or file a petition for review with the circuit court of the county in which the incapacitated person resides, or the supreme court of appeals. The person challenging the selection shall have the burden of proving the invalidity of that selection. They will be responsible for all court costs and other costs related to the proceeding, with the exception of attorneys' fees. If the court finds that the attending physician or advanced nurse practitioner acted in bad faith, they shall be responsible for all costs. Each party shall be responsible for their own attorneys' fees. Refer to W. Va Code §16-30-8(e) for more information.

Advance directives, such as medical power of attorney, durable power of attorney with health care decisions, and/or living wills, take precedence over a HCS appointment. If, in the opinion of the medical professional, decisions are not being made in the best interest of the client, the medical professional should first attempt to resolve the issues. If this cannot be accomplished, these instruments require

court action to terminate before a HCS may be appointed. It is the medical professionals and the client's family's responsibility to seek legal intervention. See, 5.8 Resolving Conflicts Between Advanced Directives for additional information.

The department can serve as an appointed HCS if an individual has already been convicted and/or before the individual was convicted. The department should only serve as HCS as a last resort.

Note: While determination of incapacity may be done by one or more of the following, a qualified physician, a qualified psychologist, or an advanced nurse practitioner, actual appointment of a HCS may only be done by a qualified physician or advanced nurse practitioner. A second opinion is only required if treatment for mental illness and/or addiction will be needed as stated in W. Va Code §16-30-24. Need for a second opinion regarding incapacity for persons with psychiatric mental illness, mental retardation or addiction.

For persons with psychiatric mental illness, intellectual disability, or addiction who have been determined by their attending physician or a qualified physician to be incapacitated, a second opinion by a qualified physician or qualified psychologist that the person is incapacitated is required before the attending physician is authorized to select a surrogate. The requirement for a second opinion shall not apply in those instances in which the medical treatment to be rendered is not for the person's psychiatric mental illness. The general rule of determining capacity could therefore be stated that it takes only one medical professional to make a determination of incapacity, and it takes only one medical professional to make a determination that an individual has regained capacity.

Process for Appointment

When the department is requested to accept an appointment as HCS, the appointment of HCS form must be completed by a qualified physician or advanced nurse practitioner who has personally examined the adult. This form must be completed and received prior to the department accepting appointment as HCS. The department will not accept a verbal appointment as HCS.

Note: (The Appointment of Health Care Surrogate form is available as a DDE in CCWIS). There may be rare situations and cases where the department may go ahead and accept HCS appointments before the department has completed their full assessment.

Exploring all Potential Candidates prior to Accepting Appointment

As an ongoing part of case monitoring and review, the worker must thoroughly explore all individuals they become aware of who may be able to serve in this capacity. The worker must contact potential candidates to determine if they are willing and able to serve. If so, the worker should encourage them to accept the appointment rather than the department continuing to serve in this capacity. The department should not continue to serve as HCS if there is an appropriate candidate who is willing and able to serve.
West Virginia state code specifies the individuals who are to be considered for appointment and the order of priority for consideration. The department is not to be appointed until all potential candidates

have been contacted. Individuals who are to be considered prior to appointment of the department are, in order of priority:

- Spouse.
- Adult children.
- Parent(s).
- Adult siblings.
- Adult grandchildren.
- Close friends.
- Any other person/entity, including but not limited to public agencies, public guardians, public officials, public and private corporations; and,
- Other persons or entities which the department may from time to time designate (this is the category under which the department is authorized to serve).

While the physician must consider potential candidates in the order listed, they may appoint an individual at a lower level if they believe that the appointee is better qualified to serve as HCS. When this occurs, the physician must document that an individual was passed over and the reason.

Parties who may NOT serve as a HCS are:

- The treating health care provider of the individual.
- Employees of the treating health care provider, not related to the individual.
- Owner, operator or administrator of a healthcare facility serving the individual; and,
- Employees of the owner, operator or administrator of a healthcare facility, not related to the individual (Adult Family Care, Medley, Assisted Living, Nursing Home, etc. are included in this category).

Responsibility of the Worker

Prior to accepting the appointment:

- Complete adult services assessment - within 30 days of receipt of referral.
- Determine if it is appropriate for the department to be appointed as HCS.
- Request completion of appointment of HCS form by a qualified physician.
- Contact all potential candidates to reassess their willingness, ability, and appropriateness to serve to the extent possible.
- Complete all documentation in CCWIS.
- Submit adult services assessment to supervisor for approval.
- If the department is going to accept an appointment, open the case in CCWIS; and,
- Once the department has been appointed and accepted HCS the APS worker should furnish the appointing medical professional a copy of the completed HCS appointment form for their records.

Note: The tasks generally are listed in the order in which the worker would complete them; however, there may be some that will be completed simultaneously such as in a situation where an emergency

situation exists and appointment is needed immediately. The worker may be completing the adult service assessment and review of the appointment of HCS form at the same time.

Whenever the department will be accepting appointment as HCS, the original, signed appointment of HCS form must be filed in the client's paper record and recorded in document tracking in CCWIS. Faxed copies are not considered to be original. The department can receive fax copies to initiate decision-making capability, but the original needs to be requested and filed. Whenever the department will be accepting an appointment as HCS, the department must be appointed and not the individual APS worker or local department office.

Following Appointment

- Complete the case plan within 30 days to be submitted to the supervisor for approval.
- Maintain ongoing contact with client, their family, and friends to gather additional information about the client's wishes and to assess for other individuals who may be able to serve instead of the department; and,
- Monitor the case on an ongoing basis.

Responsibility of the Supervisor

The supervisor is responsible for ensuring that applicable policies and procedures are followed. The supervisor must:

- Review and approve adult services assessment.
- Approve case connect in CCWIS, if a case is to be opened.
- Sign/authorize the signing of the appointment of HCS to authorize the department to be appointed; and,
- Review and approve adult services assessments, reviews, documentation, and case plans.

Appointment for Individuals in State Operated Facilities

When a SDM is needed for an adult in a state operated facility, it is the responsibility of the facility to locate and arrange for a suitable SDM. The facility is expected to explore all potential individuals and entities who may be able to serve as SDM and to document the results of these efforts. As with individuals in other settings, the department may be appointed to serve as HCS only after it has been determined that there is no one who is willing, able, and appropriate to serve in this capacity. State operated psychiatric facilities are Sharpe Hospital and Mildred Mitchell Bateman Hospital. State operated long term care facilities are Jackie Withrow Hospital, Hopemont Hospital, Lakin Hospital, John Manchin Sr. Health Care Center, and Welch Emergency Hospital.

Whenever the department receives a HCS appointment from these facilities the local office needs to thoroughly review the appointment for accurate language, timeframes, discharge date, and documentation of the selection process. If the worker has any questions concerning the HCS appointment form, the worker will contact the medical professional who completed the form. Workers should not make changes to the form. The APS worker needs to contact the appropriate facility staff to

voice their concerns about the form. If there are changes to be made to the HCS form, only a qualified attending physician or advanced practice nurse can make modifications.

The APS worker is to explore suitable alternative individuals or entities to serve as HCS on an ongoing basis in all instances where the department is appointed to serve in this capacity. This is to be done as part of the case review process, and if a suitable alternative HCS is identified, the worker should request to have the other party appointed instead of the department.

SECTION 5 - CASE MANAGEMENT

5.1 Case Management Definitions

The definitions used below are specific to this section and are a supplement to the general definition section.

Term	***Definition***
Change of Venue	A legal process whereby the court with jurisdiction over a Guardianship proceeding may transfer jurisdiction of the proceeding to a court in another county or state pursuant to W .Va. Code §44A-1-7. A guardian and/or conservator shall continue to file their respective reports and/or accountings to the court that has jurisdiction over the proceeding. See, W. Va. Code §44A-1-7
Do Not Resuscitate (DNR)	A written, signed directive by a capacitated individual directing the health care provider not to administer cardiopulmonary resuscitation or any mechanical means to prolong or continue life
Life-prolonging intervention	Any medical procedure or intervention that, when applied to a person, would serve to artificially prolong the dying process. Includes, among others, nutrition and hydration administered intravenously or through a feeding tube. Does not include administration of medication or performance of any other medical procedure deemed necessary to provide comfort or alleviate pain. See, W. Va. Code §16-30-3
POST form	The Portable Orders for Scope of Treatment (POST) is a standardized form containing orders by a qualified physician, an advanced practice registered nurse, or a physician assistant that details a person's life sustaining wishes as provided by W. Va. Code §16-30-25. See, W. Va. Code §16-30-3

5.2 Introduction

Case management is the ongoing service provided by the department for clients who have been opened for SDM services. It consists of identification of strengths, needs, appropriate services, and resources to address the identified needs. Workers will make referrals to appropriate service agencies and coordinate service delivery.

5.3 Commencement of Substitute Decision-Maker Authority

Adult Guardianship

The guardian's decision-making authority officially begins upon receipt of the signed order of appointment. In reality, there is some variation from one jurisdiction to another in the expectations of the court regarding when the guardian's authority begins.

Mandates for the Appointee

Whenever the department has been appointed to serve as guardian for a protected person, unless the appointment is limited by the order of appointment, the SDM has the following responsibilities as they carry out their duties in this capacity as defined by West Virginia Guardianship and Conservatorship Act and this policy.

- Obtaining provision for and making decisions related to the adult's care, health, habilitation, education, therapeutic treatment, and residence, per regulations and policies consistent with the guardianship appointment.
- Maintain ongoing regular contact with the individual, to know and adequately represent their capabilities, strengths, limitations, needs, and opportunities.
- Exercise authority only to the extent necessary, as determined by the protected person's limitations.
- Encourage the protected person to participate in decisions made on their behalf, to act on their own behalf to the extent possible and to develop or regain the capacity to manage their own affairs to the extent possible.
- Consider the expressed desires and personal values of the protected person, when known, in making decisions on their behalf and when these are not known, to act in the best interest of individual, exercising reasonable care, diligence, and prudence; and,
- Prepare and file periodic reports with the court.

When authorization of the court is required in advance, as outlined above, the APS worker should advise their supervisor immediately and promptly refer the matter to the appropriate legal counsel for adult services for review and assistance.

When the department is appointed, a bond is not required.

Health Care Surrogate

The department's authority as HCS officially begins upon acceptance of the appointment. The authority of the medical power of attorney representative or surrogate may recommence if the person subsequently becomes incapacitated as determined pursuant to W. Va. Code §16-30-7, unless during the intervening period of capacity the person executes an advance directive which makes a surrogate unnecessary or expressly rejects the previously appointed surrogate as his or her surrogate. A medical power of attorney representative or surrogate's authority terminates upon the death of the incapacitated person except with respect to decisions regarding autopsy, funeral arrangements or

cremation and organ and tissue donation: Provided, That the medical power of attorney representative or surrogate has no authority after the death of the incapacitated person to invalidate or revoke a preneed funeral contract executed by the incapacitated person in accordance with the provisions of article fourteen, chapter forty-seven of this code prior to the onset of the incapacity and either paid in full before the death of the incapacitated person or collectible from the proceeds of a life insurance policy specifically designated for that purpose].

5.4 Decision Making

A court appointed guardian is responsible for assisting the protected person with personal decisions, whereas a HCS is responsible for making health care decisions only. A SDM is responsible for making decisions, in consultation with the adult to the extent possible. Decisions are to be made in accordance with the individual's personal wishes and values when known and in accordance with their best interest when their wishes and values are not known and cannot be reasonably determined. Decisions being made on behalf of the incapacitated adult are a reflection of the individual's values and beliefs rather than those of the worker. An assessment of the person's best interest is to include consideration of the following:

- Medical condition.
- Prognosis.
- Personal dignity and uniqueness.
- Possibility and extent of preserving the person's life.
- Possibility of preserving, improving or restoring the person's functioning.
- Possibility of relieving the person's suffering.
- Balancing of the burdens to the benefits of the proposed treatment or intervention; and,
- Other such concerns or values as a reasonable individual in the person's circumstances would wish to consider.

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The department as the SDM is also responsible for attending Multidisciplinary Treatment Plans (MDTs), Interdisciplinary Team Meetings (IDTs), Individual Program Plans (IPPs), discharge plan meetings, and care plans concerning the protected individual. The department as the guardian must approve and sign off on all decisions, except financial, relating to the client. As HCS, the worker will make medical decisions only. By attending and participating in the scheduled meetings the department is fulfilling their fiduciary obligation that all services are in the client's best interest.

Case Management for Individuals in State Operated Facilities

Substitute decision-maker responsibilities when in a state operated facility requires the facility to provide email notifications to the client's assigned worker, APS supervisor and program manager of any treatment team meeting schedule. If there are issues concerning treatment plan meetings being rescheduled, changed, or not occurring without proper notification given to staff the APS worker needs to notify their supervisor immediately. Upon being notified, the supervisor should attempt to resolve any issues directly with appropriate state facility staff. If further action is needed the supervisor can notify their program manager and the director for Title XIX ID/DD Waiver clients. It is essential for the

department to attend the Interdisciplinary Team Meetings (IDT) and Individual Program Plans (IPP). The SDM must participate in the (IDT) and/or (IPP) meetings and sign and approve both in order for services to be implemented. There may be extraordinary situations when the department may have a conflicting crisis situation and may not be able to attend the meeting in person. In these situations, the department may participate by telephone conferencing. This method should only occur for extraordinary situations and should not occur on a regular basis. As the SDM, the department can disagree with the interdisciplinary team meeting (IDT) and/or individual program plans (IPP). If the department disagrees with a portion of the plan they need to mark on the (IDT) and/or (IPP) the section that is in disagreement. The department as SDM needs to choose either agree or disagree within the 14 day time-frame to allow the service coordinator time to distribute the (IDT) and/or (IPP) to all team members. If another individual is appointed guardian besides the department, that individual is responsible for attending and participating in the multi-disciplinary treatment plans (MDT's), interdisciplinary team meetings (IDT), individual program plans (IPP) and care plans.

Client Compliance

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

Document Disclaimer

Anytime the department, as SDM, signs any document, it must include a disclaimer that clearly states that the department is not accepting any financial responsibility for these arrangements. Signature should be "West Virginia Department of Human Services by (worker's name)".

Guardianship

Decision-making by the guardian may include all personal decisions, or the order of appointment may limit the duration or scope of the guardian's authority. The guardian has the ability to act for the protected person and exercise their rights. A guardian is responsible for assisting with decisions regarding the protected person's personal matters. Limitations to the scope of that authority may be set dependent on the needs and capabilities of the protected person. The protected person shall be encouraged to participate in decision-making on their behalf to the extent possible.

If the department is appointed guardian, the necessary applications for benefits and enrollments must be made by the worker immediately after being appointed as guardian. If another individual is appointed guardian, that individual is responsible for making the necessary applications and enrollments.

The duty to act in the best interest of the protected person includes taking actions that may be adverse to the department, bureaus within the department, and other state agencies when advocating for services or civil remedies on behalf of the protected person. Under no circumstances will guardians employed within the department put the interest of the department or bureaus within the department before the interests of the protected person. Personal decisions that the guardian may be involved in making include the following, unless these are specifically excluded in the order of appointment:

- Where the protected person will live and changes in residential settings.
- Services and treatment required to address needs.
- Health care to be provided and/or withdrawn.
- Authorization of placement in a nursing facility or other health care setting appropriate to meet health care needs.
- Resources needed to meet educational needs, if applicable.
- The protected person's means of support, including applying for benefits on the protected person's behalf when applicable; and,
- Decisions regarding the body of the deceased protected person for the purposes of authorizing an autopsy and making funeral arrangements. The guardian or conservator's authority shall continue until an executor or an administrator has been appointed W. Va. Code §44A-4-5. Preparation for this should be discussed with the protected person and plans made and documented in advance to ensure that the person's wishes are known and carried out to the extent possible.

There are certain decisions of the guardian that require approval of the court in advance. These include:

- Decisions resulting in a change in the protected person's marital status.
- Decisions resulting in a change of the protected person's residence to another state.
- Decisions resulting in termination of the protected person's parental rights.
- Deviation from a previously executed living will or medical power of attorney; and,
- Revocation or amendment of an existing and valid durable power of attorney.

When authorization of the court is required in advance; the worker will advise their supervisor immediately and promptly refer the matter to the legal counsel for adult services for review and assistance.

The guardian may NOT make decisions in the following areas:

- Decisions specifically excluded in the order of appointment; and,
- Financial decisions.

Medicare Enrollment

If the department is serving as guardian, the worker must ensure that the client is enrolled in a medicare plan and that all necessary applications and enrollments are made on the client's behalf within 30 days after the client is 64 years and nine months of age. This includes enrolling in Medicare Part A and B and/or C and selecting an appropriate plan under Medicare Part D that provides the best coverage for

the client's individual medication needs. In addition, the worker must apply for extra help through the Social Security Office. Extra Help is a program that provides financial assistance to individuals with limited income in paying for Medicare Part D. If an individual qualifies, they will receive assistance in paying the premium and co-pays for their prescription drugs. This application must be made through the Social Security Office. The worker as guardian must ensure that these applications are made on the client's behalf prior to the client reaching age 65. An application for QMB, SLIMB, and QI-1 must be made through Bureau for Family Assistance for assistance in payment of the Medicare premium.

Health Care Surrogate Decision-Making

Health care decisions that the surrogate may be involved include the following:

- Placement in/discharge from a medical/treatment setting.
- Medical services/treatment required to address health care needs (hospital, psychiatric facility, ambulatory health care, physician's office, clinic, hospice, home health care, etc.).
- Health care to be provided and/or withdrawn.
- Authorization, withholding or withdrawal of life prolonging interventions.
- Authorization of placement in a nursing facility or other health care setting appropriate to meet health care needs (extended care facility operated in connection with a hospital, private psychiatric hospital, nursing home, rehabilitation center, ICF/IID, etc.).
- Decisions related to autopsy, organ/tissue donation, burial/cremation, and funeral arrangements AFTER the incapacitated adult is deceased (to the extent possible preparation for this should be discussed with the adult and plans made and documented in advance to ensure that the person's wishes are known and carried out).
- Signing for release of the body to the funeral home.
- Signing to authorize the funeral arrangements; and,
- Authorizing the release of medical records to third parties for placement, billing, treatment planning, provision of care, etc.

The Health Care Surrogate may NOT make decisions in the following areas:

- Decisions regarding services that are not related to addressing the adult's health care/medical needs.
- Authorization of placement in/discharge from residential (non-health care) settings. This includes AFC, assisted living homes, SFC (Medley), registered but legally unlicensed homes, etc..
- Authorization of placement in Mildred Mitchell Bateman and Sharpe Hospitals (requires commitment proceeding to do involuntary placement in these settings); and,
- Financial decisions.

5.5 Placement Decisions

Unless specifically excluded by the order of appointment, the guardian will be involved in making decisions regarding living arrangements and placement on behalf of the protected person. As HCS, decision making abilities for living arrangements and placement are limited to placement in or discharge

from a health care/treatment facility or program. As with all decisions made by the SDM, the known and expressed wishes and values of the protected person are to be considered when making these decisions.

Guardianship Placement Decisions

Due to physical and/or mental incapacities, some clients may be unable to reside in their own home, even with provision of a variety of supportive services. When this is the situation, the APS worker must evaluate the client's circumstances, needs, supports, family relationships, proximity to the adult's home community and available resources to assist in identifying and facilitating the most appropriate, least restrictive placement alternative. Options to consider include the following:

- Rental housing.
- Placement with a relative, friend, or other interested party (with or without supportive services).
- Adult family care, refer to *Adult Residential Services policy* for detailed information.
- Specialized family care home (Medley).
- ID/DD waiver program.
- Adult group home.
- Assisted living facility, refer to *Adult Residential Services policy* for detailed information.
- ICF/IID group home; and,
- Nursing home.

The guardian is to be an active participant in determining the most appropriate placement option for the client and authorizing placement, but it is not solely the guardian's responsibility to find the placement setting. The worker will assist clients and providers with finding and determining an appropriate placement setting and ultimately authorizing the placement.

As guardian, the department is not to authorize placement in a setting that is not certified through BSS or licensed by the Office of Health Facilities Licensure and Certification (OHFLAC). If the protected person resides in an unlicensed/uncertified setting upon the appointment of guardianship, the following factors must be considered to determine if the individual will be permitted to remain in that setting:

- The extent to which the placement setting, and the provider adequately meets the adults needs.
- Duration in this setting.
- Relationship of the protected person with the provider/caregiver; and,
- Expressed desire of the adult to remain in the setting.

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

In addition to assisting with decisions regarding the type of placement setting that is most appropriate, the guardian may also assist with applying for benefits to fund housing or placement needs (i.e., HUD Housing, Medicaid - for nursing home payment, admission forms for placement in long-term care setting, Medicaid Waiver, hospital admission, etc.). When the department as guardian signs these types of

documents, the APS worker must document in writing beside their signature that the department's signature DOES NOT imply or guarantee payment by the department.

Health Care Surrogate Placement Decisions

The HCS will be involved in making decisions regarding living arrangements/placement on behalf of the adult only when these decisions relate to placement in or discharge from a health care/treatment facility or program. It is not solely the HCS' responsibility to find the appropriate placement setting. As with all decisions made by the HCS, the known and expressed wishes and values of the adult are to be considered when making these decisions.

Examples of health care/treatment settings include:

- Extended care facility operated in connection with a hospital.
- Private psychiatric hospital.
- Nursing home.
- Rehabilitation center.
- ICF/IID group home.

While the APS worker is to be an active participant in determining the most appropriate health care/treatment placement option for the client and can authorize placement in this type of setting when appropriate, it is not solely the worker's responsibility to find the health care/treatment setting. It is appropriate for the worker to authorize the placement in this type of setting. The department as HCS is not to authorize placement in or discharge from any setting that is not a health care setting.

Note: Whenever a worker becomes aware of an unregistered residential provider that is operating, the worker is to advise the provider that they are required to register with the Office of Health Facility Licensure and Certification (OHFLAC) if they have not already done so. The worker must also send written notification to OHFLAC of the existence of the home.

5.6 Medical Decisions

A substitute decision-maker (SDM) will make all medical decisions unless specifically excluded by the order of appointment in a guardianship case. The SDM will be involved in making medical and health care related decisions on behalf of the protected person.

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

- Routine medical care.
- Emergency medical care.
- Life prolonging measures;
- Admission to/discharge from medical treatment facility (NH, ICF/IID, hospital, substance abuse treatment facility, etc.).
- Behavioral health services.
- Therapeutic treatment.
- If a POST form is completed, it must be signed by the attending physician. The worker should not complete the form but it would be appropriate for them to sign the completed form as the SDM, if the department has been appointed as the guardian or HCS.
- Home health services; and,
- Hospice care.

Some medical decisions can be very difficult to make, and an ethics consult may be required, for more information refer to 5.12 Ethics Consultation.

POST Form

When the department is appointed as the SDM, completion of the Portable Orders for Scope of Treatment (POST) form by the qualified physician, advanced practice registered nurse, or physician assistant to document the existence of advance directives, medical decision-makers, and wishes is to be encouraged for anyone suffering from a serious life-limiting medical condition which may include advanced frailty. POST is for the seriously ill or very frail. This form must be completed and signed by the attending physician. The worker should not complete the form, but it would be appropriate for them to sign the completed form as the legal representative if the department has been appointed as the SDM. In addition, as the incapacitated adult's representative, the department does have access to the health information necessary to carry out responsibilities as HCS [HIPAA Privacy Rule 45 CFR.I64.502(g).

5.7 End-of-Life Decisions

Unless specifically excluded by the guardianship order of appointment, the SDM may be involved in making decisions on behalf of the protected person regarding end-of-life care. As with all decisions made by the SDM, the known and expressed wishes and values of the protected person are to be considered when making these decisions. In addition, if the protected person has one or more advance directives, such as a DNR, living will, or medical power of attorney, end-of-life decisions of the SDM will be guided by these documents to the extent possible.

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

- Palliative care/comfort measures (pain management, etc.).
- Use/removal of life support.
- Funeral arrangements.
- Organ/tissue/body donation; and,
- Agreeing to a DNR (no code) when one does currently exist.

Any deviation from an existing living will or medical power of attorney or to revoke or amend a durable power of attorney must be authorized, in advance, by the court. End-of-life decisions can be very difficult to make, particularly when the protected person is unable to communicate their wishes and their wishes and values are not known. An ethics consultation may be required, refer to 5.12 Ethics Consultation.

The guardian or conservator of a protected person shall terminate upon the death of the protected person, provided, that in the absence of an advanced directive or pre-need burial or cremation contract, after the death of the protected person, a guardian or a conservator, shall have authority to make decisions regarding the body of the deceased protected person for the purposes of authorizing an autopsy and making funeral arrangements. The guardian or conservator's authority shall continue until an executor or an administrator has been appointed W. Va. Code §44A-4-5.

It is essential the APS worker discuss funeral arrangements and preferences with the protected person, their family (when applicable), care providers (i.e. adult family care providers, specialized care provider), funeral homes and the conservator (if applicable) in advance and facilitate the pre-need burial arrangement if possible. The department as guardian is not responsible for payment of the individual's burial costs. The indigent burial program through income maintenance may be utilized, but the funeral director or family member must make the application. The department is to follow the clients wishes for their burial procedure, if known and to the extent possible. If not known, the department can approve a traditional burial and/or cremation as a last resort.

Organ donation is an end-of-life decision that can be written in an advanced directive, such as living will, indicated on an individual's driver's license, through the CORE | Center for Organ Recovery & Education or simply made known by the individuals expressed wishes. It is essential that the worker discusses organ, tissue, and/or body donation with the client and family prior to the client becoming deceased. It is recommended that the worker make every attempt to obtain the clients wishes in writing. If the department is the SDM, the APS worker will need to gain approval from the supervisor for an organ donation and then make an official request through the court for permission to proceed. An ethics consult can always be requested if there are any questions that arise from family and/or interested parties concerning this decision. For more information regarding an ethics consultation, refer to 5.12 Ethics Consultation. If the wishes of the protected person are not known regarding organ, tissue, or body donation, donation will not be authorized by the department.

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

Do Not Resuscitate (DNR) Order

A Do Not Resuscitate order (DNR) is a physician's order, issued by a licensed physician authorized to practice in the state of West Virginia. The order specifically states that cardiopulmonary resuscitation

should not be administered to a certain person. The requirements related to issuing a do not resuscitate order are contained in W. Va. Code §16-30C.

In situations where the department has been legally appointed to act as SDM for the protected person the decision of whether to sign a DNR should not be taken lightly. The decision to sign a DNR must be made on a case by case basis. Careful consideration should be given to the SDM's knowledge of the client and their expressed wishes. In no instance is the department to routinely sign DNR orders.

When a DNR is being considered or has been requested by the attending physician, the APS worker must consult the medical professional(s) to gather applicable information about the client's medical and physical condition, prognosis for improvement, impact of health condition on quality of life, etc. Approval must be granted by the supervisor prior to a DNR being signed by the worker. The worker is strongly encouraged to consult with the ethics committee in the facility where the adult resides if applicable and/or the ethics committee of BSS. For more information on ethics consultation, refer to 5.12 Ethics Consultation.

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

- When the individual has capacity and authorizes their attending physician to do a DNR; and,
- When the individual is incapacitated but has a SDM who authorizes the attending physician to do a DNR.

The opinion of a second physician is required when:

- The individual is incapacitated and there is no SDM; and,
- The patient is a minor child under the age of 16.

5.8 Resolving Conflicts Between Advance Directives

There may be times when advanced directives conflict with one another or with decisions being made on behalf of the incapacitated adult. When a conflict exists, the following rules apply:

- Generally, directives set forth in a medical power of attorney or living will are to be followed since these are the personal expression of the adult's wishes, executed prior to their becoming incapacitated.
- If there is a conflict between the adult's expressed wishes and the decisions made by the medical power of attorney or HCS, the adult's expressed wishes are to be followed.
- If there is a conflict between two written advance directives executed by the adult, the one most recently completed takes precedence, but only to the extent needed to resolve the inconsistency; and,
- If there is a conflict between decisions of the SDM and the adult's best interest, as determined by the attending physician, when the adult's expressed wishes are unknown, the attending physician is to attempt to resolve the conflict by consulting with a qualified physician, an ethics committee, or other means. If the conflict cannot be resolved, the attending physician may transfer the care of the adult to another physician.

5.9 Relationship Decisions

Unless specifically excluded by the order of appointment, the guardian may be involved in making decisions regarding the interpersonal relationships between the protected person and others. These may be some of the most difficult decisions that a guardian is called upon to make. As with all decisions made by the guardian, decisions are to consider the known and expressed wishes and values of the protected person as well as their best interest. It is essential that decisions be guided by these factors rather than the personal beliefs and values of the worker. It is important to facilitate development and maintenance of interpersonal and family relationships unless it is detrimental to the protected person to do so. Decisions that the guardian may be called upon to make include decisions regarding the following (this list is not intended to be all inclusive):

Visitation with relatives

- A relative may file an application with the court requesting access to the protected person including visitation or communication and have a hearing within 60 days or no less than 10 days if there has been a recent significant decline in the protected person's health, or death is imminent.
- The guardian shall be personally served with a copy of the application and cited to appear for hearing.
- Visitation with friends.
- Intimate relationships.
- Protection from victimization and exploitation by others; and,
- Protection from abuse or neglect by others.

There are certain changes related to the protected person's interpersonal relationships that require approval of the court in advance. Refer to 5.4 Decision Making for more information.

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

5.10 Financial Decisions

The financial situation of the protected person can directly impact decisions made by the SDM; however, the guardian or health care surrogate is not authorized to make financial decisions. Because the protected person's financial situation is interrelated with the ability to meet their needs, it is essential the APS worker collaborates with the financial representative, whether a conservator, payee, trustee, etc., as decisions are being made.

The guardian may assist in ensuring the availability of adequate financial resources by:

- Applying for benefits on behalf of the protected person.
- Seeking the appointment of a representative payee, when applicable; and,
- Petitioning for appointment of a conservator, when applicable.

Whenever a goal on the client's case plan will require expenditure of funds, the goal must be approved by the financial representative.

Occasionally the circuit court will appoint the department to serve as conservator for a protected person or will include responsibilities in a guardianship appointment that relate to handling financial matters. Both situations are inconsistent with state statute. If the department has been appointed conservator, the appointment must be contested during the hearing, or if the department is not party to the hearing, immediately upon receipt of notification of the appointment. If the department has been appointed guardian but specific responsibilities enumerated in the order of appointment include making financial decisions, the inclusion of financial decisions must be contested immediately upon receipt of notification of the appointment. The worker is to contact their supervisor immediately. The supervisor will contact the legal counsel for adult services to initiate filing of a petition for *Termination, Revocation or Modification of the Appointment of Conservator or Guardian*.

Note: Guardians or conservators may make applications for benefits, such as Social Security, Medicaid application and reviews, Veterans Benefits, Medicaid Waiver services, etc.

If the department is serving as HCS and if there is no other entity or interested person to complete the Medicaid or Medicare application for the client, the APS worker may complete the application upon the approval of their supervisor as a last resort. The department, as HCS, may not make any other application for benefitsSocial Security, Veterans Benefits, Medicaid Waiver services, etc.

Note: Anytime the department, as SDM, signs any document, it must include a disclaimer that clearly states that the department is not accepting any financial responsibility for these arrangements. Signature should be "West Virginia Department of Human Services by (worker's name)".

5.11 Guardianship Supportive Service Decisions

Unless specifically excluded by the order of appointment, the guardian will be involved in making decisions related to social and supportive services on behalf of the protected person. As with all decisions made by the guardian, the known and expressed wishes and values of the protected person as well as their capabilities, strengths and limitations are to be considered when making these decisions. Decisions that the guardian may be called upon to make include decisions regarding the following:

- Transportation-if this is an identified service need, the guardian should assist with arranging for appropriate transportation services. The guardian is not required to transport the protected person.
- Recreational services.
- Education and training services.

- Employment services.
- Rehabilitation and habilitation services; and,
- Application for benefits (SSA/SSI, Medicaid, Veterans Benefits, Medicaid Waiver services, etc.).

5.12 Ethics Consultation

Making decisions for another person can be demanding and difficult. The responsibility for making these decisions becomes more difficult when the SDM does not have the benefit of personal knowledge of the protected person and the protected person is no longer able to communicate their personal preferences. Most difficult of all, are those decisions related to dramatic life changing, medical procedures, and end-of- life care. Examples might include, but are not limited to:

- Amputation of a limb.
- Placement of an artificial feeding device.
- Placement on/removal from a ventilator.
- Exploratory surgery.
- Research studies.
- Changing of advanced directives.
- Organ transplants.

In these instances, an ethics consult may be necessary to aid the guardian in making these decisions. Many times, the health care facility providing treatment will have an internal ethics committee to assist with these decisions. If an internal ethics committee is not available, or if the worker is not comfortable with the recommendation of the facility's internal committee, an ethics consultation may be requested by contacting the adult services program manager.

The worker is encouraged to seek an ethics consultation when:

- The protected person who has some degree of decision-making capacity will not agree to follow the course of action recommended by the SDM and other professionals, as applicable, and not doing so may cause significant harm to themselves or others.
- An impasse has been reached by local professionals on an ethical problem concerning the protected person.
- A close relative or other interested party with a legitimate interest in the protected person disagrees with a decision to be made by the worker.
- A decision must be made which is very unusual, unprecedented, or very ethically complex; or,
- A decision needs to be made about withholding or withdrawing life-sustaining medical treatment for a client who totally lacks capacity and whose wishes and values are not well enough known to predict what the client would choose.
    - When the department has been appointed as SDM and a decision about whether to withhold/withdraw life-prolonging intervention is being considered or has been requested by the attending physician, in best case practice the APS worker should obtain a second medical opinion.

An ethics consultation may be initiated by the worker in consultation with the supervisor. Requests for consultation should be made by contacting the program manager. It should be noted that decisions of the ethics committee are recommendations. The final decision rests with the department as SDM. The ethics committee is made up of the following entities: APS worker, supervisor, program manager, policy unit, and/or the director for the center for health & ethics of law at West Virginia University 1-877-209-8086. Legal counsel for adult services can be consulted if their counsel is needed.

Consultation Protocol

- The worker will complete the ethics consultation intake tool and submit it to the program manager. This completed form may be faxed or emailed. The program manager will notify other members of the ethics committee.
- If possible, the program manager will arrange a conference call in order to discuss the consultation request. The worker making the request, as well as any other relevant local individuals, should participate in this call. If it is not possible to arrange a conference call, the program manager will discuss the consultation request with the members of the ethics consultation service group and record their responses. More than one call to each member may be necessary. The resulting recommendation will be provided to the worker requesting the consultation; and,
- The program manager will prepare an ethics consultation summary documenting the consultation request and summarizing the consensus of the ethics consultation committee members. This summary will be shared with the full ethics committee. To the extent possible, confidentiality shall be maintained by not identifying by name of the client for whom the consultation was requested.

5.13 Foster Care Youth turning 18

For information on foster care youth transitioning to APS, refer to *Foster Care policy*. Adult Protective Services may become involved with a youth informally at the age of 17. The child welfare worker will complete the *Youth Transition to Adult Services form* if it is believed the youth will require SDM services. The role of APS staff at this point will be limited to the following:

- Attendance at the youth's multidisciplinary treatment team meetings.
- Participation in scheduled case staffing; and,
- Participation in the case review process.

The APS worker should become a secondary worker on the foster care case at the age of 17 ½, if the youth requires an SDM and there are no willing, able, and appropriate individuals to serve. The child welfare worker and the APS worker should work jointly in planning for the youth's entry into adulthood and exit from foster care. The child welfare worker will retain responsibility for the case until the youth is discharged from foster care.

The APS worker will complete a request to receive intake 60 days prior to the youth turning 18 for guardianship cases or at age 18 for HCS cases. The SDM case and foster care program types will be associated in CCWIS to show the relationship between the two.

The APS worker may file a guardianship petition60 days prior to the youth turning 18. It may not be filed prior to this time. See Section 3 Adult Services Assessment and Section 5 Case Management for more information. Further information is available in *Legal Requirements and Process policy.*

The department as the appointed HCS CANNOT sign an FC-18 to allow the client to stay in placement.

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

5.14 Compensation for a Court Appointed Guardian

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

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

5.15 In State/Out of State Guardian

Guardian Appointed in a State Other than West Virginia

When a protected person becomes a resident of West Virginia and the guardian resides in another state, the existing guardian may continue to serve if the appointment was executed in accordance with the laws of West Virginia or the state in which the appointment was made.

If the existing guardian wishes to transfer guardianship to West Virginia, they should file a petition for the appointment of a new guardian, see W. Va. Code §44A-1-12. If the existing HCS wishes to transfer an appointment to West Virginia, they should request appointment of a new HCS by the adult's physician in West Virginia in accordance with West Virginia law, see, W. Va. Code Chapter §16-30. Generally, the department will not be involved in these situations unless the department is being appointed guardian or the out of state guardian requests information from the department about filing the petition in West Virginia.

Protected Person Moves Out of State- Guardian

Before a protected person may transfer out of state, the guardian must seek prior approval of the court. When it is suggested to move a protected person out of state, the APS worker shall advise their supervisor immediately and promptly refer the matter to the legal counsel for adult services for review and assistance.

In preparation for a transfer to another state and filing of the petition, the worker must contact the appropriate agency in the receiving state to determine the process for appointment of a new guardian. The department should request that the receiving state become the guardian, decision-maker, or fiduciary for the protected individual. If the receiving state accepts the guardianship appointment of the protected individual, the department should not retain guardianship for the protected individual who no longer resides in West Virginia.

In circumstances in which the receiving state declines to become guardian, decision-maker, or fiduciary for the protected individual the department may retain guardianship of the protected individual; however, the department will continue to seek other possible potential decision-makers. If the department determines to place the protected individual out of state, that determination should be of last resort and only after all other placement resources have been exhausted. A payment resource must also be secured prior to the protective individual being placed out of state and a policy exception must be requested and approved before any out of state placement occurs. When the protected individual is placed out of state and the department retains decision-making authority all case practices and policy must continue to be followed.

Incapacitated Adult Moves Out of State- HCS

The department is not to retain the HCS appointment for an incapacitated adult who no longer resides in the state of West Virginia. Whenever the incapacitated adult is transferring out of state, the worker should provide written notification to the medical professionals and facilities that provided immediate treatment and care and who appointed the department as HCS and the client that the department will no longer be able to serve. After completion of all notifications and the final assessment, the HCS case is to be closed.

SECTION 6 - CASE PLAN

6.1 Introduction

Following completion of the adult services assessment process, a case plan must be immediately developed to guide the provision of services in the ongoing stage of the case, and should give consideration to both short and long term planning including planning for eventual discharge from SDM as appropriate. Case planning must be primarily directed toward meeting the needs of the guardianship or HCS client. In developing a case plan, consideration should be given to the major service needs that exist as well as the strengths of the protected person, their expressed wishes and personal values, and their best interest, if their personal wishes are not known and cannot be determined. Based on the

circumstances, it may also be appropriate to include a plan to reduce risk and assure safety of the adult. Services needs are to be addressed in priority order beginning with the most emergent issues.

Development of the case plan is to be based on the findings and information collected during the assessment and evaluation processes as well as any specific requirements set forth by order of the court. Based on the information gathered, goals must be identified and set forth in the case plan. These will provide the milestones for assessing progress and success in the implementation of the plan. The case plan provides a written statement of the goals and desired outcomes related to the conditions identified through the assessment processes. Each area identified in the adult service assessment as a need must be addressed in the case plan.

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

The case plan is to be reviewed on an ongoing basis and updated at least every 6 months in conjunction with the formal case review process. In addition, the case plan may be updated more frequently as appropriate. Those individuals who were involved in the development of the department's case plan should also be involved in making changes/modifications to the plan.

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

6.2 Inclusion of the Incapacitated Adult in Case Planning

Inclusion of incapacitated adults in the case planning process presents the APS worker with some unique challenges. Although determined to lack decision-making capacity, the client may have the capacity to participate in the development of the case plan and should be permitted and encouraged to participate

in its development to the extent they are able, including signing of the completed document. Some special considerations for the APS worker include the following:

- The SDM is charged with the responsibility of acting in accordance with the known or expressed wishes and values of the protected person to the extent possible, and when their wishes and values are not known, acting in their "best interest". When the "best interest" of the adult is in conflict with their expressed wishes, the final decision rests with the SDM and should take into consideration the client's values, strengths, and limitations.
- When the department has been appointed by the court to serve as guardian and the adult also has a financial decision-maker (conservator, representative payee, etc.) this representative must be respected as the spokesperson for the client's financial matters. Generally, their consent must be obtained in financial matters included on the case plan. If it appears that the acting or appointed financial decision-maker is unwilling or unable to fulfill their obligations, which negatively impacts the provision of needed health care for the client, the case plan must address seeking a change in the client's financial decision-maker.
- When the client has an ongoing informal support that will be continuing as part of the case plan (e.g., relative, neighbor, friend, etc.), this individual should be included in the service planning process and may sign the case plan. The relationship of the informal representative is to be documented in the client record.
- The situations listed above are the most likely to occur and require consideration by the APS worker. Variations, however, may occur and could require consultation between the APS worker and their supervisor to determine the most appropriate approach.

6.3 Determining the Most Integrated Level of Intervention

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

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

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

6.4 Required Elements - General

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

- Specific criteria which can be applied to measure accomplishment of the goals.
- Specific realistic goals for every area identified as a problem, including but not limited to those identified through the assessment processes, such as the identification of the person or persons for whom the goal is established, person, persons, or agency responsible for carrying out the associated task, identification of services, and the frequency and duration of services.
- Specific tasks will be required to accomplish the goal or goals. These are tasks or activities designed to help the client progress, should be very specific, and should be stated in behavioral terms (as to what action is to occur i.e. Mary Jones will attend adult day care at least once weekly to improve interpersonal skills). These tasks should be monitored frequently; and,
- Identification of the estimated date for goal attainment, if applicable. This is a projection of the date that the worker and client expect that all applicable tasks will be achieved and that minimal standards associated with change will have been attained.

6.5 Considerations for Case Plans

The APS worker must also take into consideration other elements to be effective for the client. Those items include the following as a baseline:

- The client's real and potential strengths.
- Client's known and expressed wishes and values.
- Attitudes, influences and interpersonal relationships and their real or potential impact on implementation of the case plan.
- The circumstances precipitated involvement by the department.
- Availability/accessibility of client resources including human resources such as family and friends; and,
- Levels of motivation.

6.6 Developing a Plan to Reduce Risk

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

- Identify the conditions that establish or support the need for a change in placement.
- Identify the recommended alternate placement arrangement.
- Identify the anticipated duration of the alternate placement arrangement.
- Describe arrangements for visitation with family and friends, including any restrictions, if applicable; and,

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

6.7 Developing and Implementing a Case Plan for an Adult in a State Operated Facility

In order to improve communication between BSS and the state operated facility, the APS worker, the APS supervisor, and program manager must be included in the treatment planning process. Notifications are to occur by email including assigned worker, APS supervisor and program manager. If there are issues concerning treatment plan meetings being rescheduled, changed, or not occurring without proper notification given to staff, the APS worker needs to notify their direct supervisor immediately. Upon being notified the APS supervisor should attempt to resolve any issues directly with appropriate hospital staff. If further action is needed the APS supervisor must notify the adult service program manager.

SECTION 7 - CASE REVIEW

7.1 Case Review Definitions

The definitions used below are specific to this section and are a supplement to the general definition section.

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

7.2 Introduction

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

7.3 Purpose

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

7.4 Time Frames

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

Client Resides in Community

For an individual living in a community setting, face-to-face contact should be made at least once weekly during the first month. Thereafter, the worker must have face-to-face contact with the protected person at least once **monthly**. This is the minimum standard and applies to guardianship and HCS cases. Workers are strongly encouraged to have more frequent contact. The need for more frequent contact with the client should be determined based on their unique needs and circumstances. These contacts are to be documented in CCWIS within 3 business days of completion of the contact. Documentation is to be pertinent and relevant to carrying out the activities set forth in the case plan.

Guardianship Client Resides in a Supervised Placement

For an individual receiving guardianshipsServices and who live in a supervised placement setting, face-to-face contact should be made at least once during the first month. Thereafter, the worker must have face-to-face contact with the protected person at least **every 60 days**. These contacts are to be documented in CCWIS within 3 business days of completion of the contact. Documentation is to be pertinent and relevant to carrying out the activities set forth in the case plan. This is a minimum standard. Workers are strongly encouraged to have more frequent contact. The need for more frequent contact with the client should be determined based on their unique needs and circumstances.

Health Care Surrogate Client Resides in a Supervised Placement

For an individual receiving HCS Services and who live in a supervised placement setting, face-to-face contact should be made at least once during the first month. Thereafter, the worker must have face-to-face contact with the individual at least **every 90 days**. These contacts are to be documented in CCWIS within 3 business days of completion of the contact. Documentation is to be pertinent and relevant to carrying out the activities set forth in the case plan. This is a minimum standard. Workers are strongly encouraged to have more frequent contact. The need for more frequent contact with the client should be determined based on their unique needs and circumstances.

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

Supervised settings include:

- Adult Family Care.
- Assisted Living (RB&C, PCH, etc.).
- Nursing Home.
- ICF/IID Group Home.

- ID/DD Waiver Home.
- Specialized Family Care Homes (Medley); and,
- Others.

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

7.5 Conducting the Review

A formal review of the SDM case must be completed at least six months following case opening and again at six month intervals thereafter until case closure. The review process consists of evaluating progress toward the goals identified in the current case plan. This requires the worker to review the case plan and have face-to-face contact with the client and caregiver/provider, if applicable. Follow-up with other individuals and agencies involved in implementing the case plan, such as service providers, must also be completed.

During the review process, the APS worker is to determine the following:

- Client's current functioning and whether or not there has been improvement or a decline in functioning since the previous review.
- Extent of progress made toward goal achievement.
- Services or intervention provided during the review period and the effectiveness of each.
- Whether or not the identified goals continue to be appropriate and, if not, what changes or modifications are needed.
- Barriers to achieving the identified goals.
- Recommendations to the court regarding services, continued need for a guardian, suggested changes, etc.; and,
- Other relevant factors.

7.6 Documentation of Review

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

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

- Caregiver status.
- Client decision-making capacity.
- Client financial management capability.
- Client environment or household.
- Client behavioral functioning; and,
- Client ability to meet ADL's.

When the review process is completed, the APS worker must submit the new case plan and, if applicable, the modified adult service assessment to the supervisor for approval. Once approved, the APS worker must print a copy of the revised case plan and secure all required signatures. Finally, they must provide a copy of the case plan to the client and to all signatories. The original signed case plan is to be filed in the client's case record (paper file) and recorded and uploaded into CCWIS.

7.7 Assessment Prior to Substitute Decision-Maker Case Closure- Guardianship

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

Upon completion of the final review, the APS worker must document the results of this review in CCWIS and submit to the supervisor for approval of recommendation for case closure. The final report to the court must also be prepared and submitted to the court prior to closure of the guardianship case. Upon supervisory approval and following submission of the final report to the court, the case is to be closed for adult guardianship services.

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

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

7.8 Health Care Surrogate

There are certain situations when the resignation or termination of the HCS appointment is permitted. These include situations when:

- The adult is no longer incapacitated; and,
- When the surrogate is unwilling or unable to serve.

In either situation the surrogate's authority will cease.

Adult Regains Decision-Making Capacity

In the situation where the individual is found to have regained capacity, this must be certified by a medical professional (attending physician, qualified physician, qualified psychologist or advanced nurse practitioner). For someone to officially regain capacity they must be examined by a medical professional(s) to say they have gained capacity to make their health care decisions, W. Va Code §16-30-22. The general rule of determining capacity could therefore be stated; that it takes only one medical professional to make a determination of capacity, and it takes only one medical professional to make a determination that an individual has regained capacity. When termination is being done for this reason, the worker should request written verification of this determination. Upon receipt of this documentation, the APS worker is to file in the case record and in CCWIS. The APS worker will proceed with case closure. In the event written notification is not received, the department is to send written notification to applicable medical professionals advising of the department's resignation as HCS. In addition, the client and legal representative, if applicable, are to be notified in writing. (See Reports-Negative Action Letter for details about notification of the client/legal representative).

Surrogate No Longer Willing/Able to Serve

The department may be unable to serve in certain situations. Examples include:

- Unable to locate the client.
- Loss of contact with the client.
- Client moved out of state.
- Inability to fulfill responsibilities as HCS due to client's failure to comply or refusal to comply with needed treatment/care. This is in extreme instances and will require program manager approval; and,
- Failure of the provider to share necessary medical information.

Whenever the department resigns as HCS, written notification must be sent by the worker to all medical professionals who have the department identified as the HCS of record. This notification is to advise these parties of the department's resignation as HCS. In addition, the client and legal representative, if applicable, is/are to be notified in writing. (See Reports-Negative Action Letter for details about notification of the client/legal representative).

Death of a Client

The authority of the HCS ends immediately upon the death of the adult except with regard to certain decisions. Specifically, they are permitted to assist with decisions regarding funeral and burial/cremation

arrangements, organ and tissue donation, autopsy, etc. W. Va. Code §16-30-6(d) states the medical power of attorney representative or surrogate's authority shall commence upon a determination, made pursuant to W. Va. Code §16-30-7 , of the incapacity of the adult. In the event the person no longer is incapacitated, or the medical power of attorney representative or surrogate is unwilling or unable to serve, the medical power of attorney representative or surrogate's authority shall cease.

7.9 Transfer of Case between Counties

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

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

Sending County Responsibilities

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

- Prior to arranging or actually completing a transfer to a provider in another county, the sending supervisor must contact the supervisor in the receiving county to notify them that a client is being transferred to their county
- Provide a summary about the client's needs (i.e. reason for the transfer, problems in other settings, disturbing behaviors, family and financial resources, insurance coverage, and legal representative(s), if applicable).
- Arrange for a trial visit(s) by the client to the proposed setting. Whenever possible this visit should be arranged at the convenience of the receiving county and the new provider.
- Complete all applicable case documentation prior to case transfer.
- Immediately upon transfer of the client to the receiving county, send the updated client record (paper and CCWIS) to the receiving county; and,
- Notify the department family support staff, the Social Security Administration office, and all other appropriate agencies of the client's change of address.

Receiving County Responsibilities

- The receiving county is responsible for completing the following tasks in preparation for the transfer.
- Notify the department family support staff of the client's arrival when the transfer is complete.
- Complete all applicable documentation; and,
- Assist with arranging or initiating any needed community resources.

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

Court Requirements and Legal responsibilities - Change of Venue

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

Note: A transfer or change of venue for court jurisdiction is NOT routinely required when a case is transferred for services from one county to another. If a transfer of venue is to be considered the worker and their supervisor should consult with the program manager and legal counsel for adult services for assistance in assessing the need/criteria for transferring venue and drafting/filing the petition for transfer of venue to another county or state.

7.10 Legal Processes

There are various legal remedies that may be appropriate for use in guardianship cases. These are summarized in the following sections and primarily related to seeking necessary changes in the *Legal Requirements and Process Policy.*

7.11 Confidentiality

Confidential Nature of Adult Services Records

Legal provisions concerning confidentiality have been established on both the state and federal levels. In federal law, provisions are contained in the Social Security Act and the Health Insurance Portability and Accountability Act of 1996 (HIPAA). On the state level, provisions pertaining to confidentiality for guardianship cases are contained in W. Va. Code §44A-2-5 and the department's *Common Chapters, Chapter 200*.

Whenever the department has been appointed a SDM, under HIPAA requirements the department is the personal representative for the adult. As such, they are considered to stand in place of the adult, having the ability to act on their behalf with respect to use and disclosure of the adult's protected health information. Specifically, under the HIPAA Privacy Rule the SDM has access to the protected health information of the incapacitated adult to the extent that the information is relevant to carrying out the duties as SDM. The SDM also may authorize disclosures of the adult's protected health information to the extent this is necessary, such as information necessary for insurance, billing, and treatment purposes (45 CFR 164.502(g) and 45 CFR 164.524).

When Confidential Information May be Released

All records of the BSS concerning an adult guardianship services client shall be kept confidential and may not be released, except as follows:

- Certain information may be released to the protected person or their documented legal representative. When releasing information to these parties, information that may NOT be included would be information and documents provided by another entity such as medical reports, psychological reports, information from Social Security Administration, etc.
- In addition, prior to release of case information the worker and supervisor must review the record to determine if any of the information contained therein would be detrimental to the protected person. If so, this information is to also be excluded from the information provided for review. In the event the request appears to be unreasonable or questionable, the supervisor/worker is to contact the legal counsel for adult services prior to release of any information.
- Upon written request, information about intellectually disabled adults may be shared with the federally recognized protection and advocacy entity within West Virginia, Disability Rights of West Virginia. This request must state the specific information being requested and the reason(s) for the request. The recipient of this information must agree to keep all information shared confidential. Sharing information does not apply to all advocacy groups - long-term care ombudsman, patient rights advocates, etc. It is limited to ONLY the federally recognized protection and advocacy entity. The worker must document the items which were sent.
- In some instances the court will seek information for use in their proceedings. (See Subpoenas, Subpoena duces tecum & Court Orders for detailed information).
- For reporting and statistical purposes, non-identifying information may be released for the preparation of non-client specific reports.
- The appointment of HCS may be presented, as appropriate, to provide verification of the department's legal relationship to the incapacitated adult, and the scope of authority granted by state statute.
- The department, in capacity as HCS, may release or authorize the release of necessary medical information about the incapacitated adult to third parties necessary for billing, insurance, and treatment purposes (45 CFR 164.524).

Note: When asked to release information the APS worker shall consult with their supervisor and/or legal counsel for adult services to ensure confidentiality compliance.

Sharing Information with the Disability Rights of West Virginia Advocates

Conditions that apply when considering whether information may be shared with Disability Rights of West Virginia (DRWV) Advocates are as follows:

- DRWV does have authority under federal law to investigate allegations of maltreatment involving individuals with disabilities if the incident is reported to DRWV, or if there is probable cause to believe that the incident occurred.
- DRWV shall have access to all records within five business days for:

    - Any individual with a disability who is a client of WVA if they or their legal representative has authorized DRWV to have access.
    - Any individual with a disability and:
        - Unable to authorize DRWV to have access.
        - Does not have a legal representative or the department is guardian; and,
        - A complaint has been received by DRWV, or DRWV has probable cause to believe the individual has been subject to maltreatment,
- When a request for access to the record is made based on probable cause, the basis for probable cause should be made known to the department prior to access of the record.
- DRWV shall have immediate access (within 24 hours of request) without consent to the records of the individuals who meet the above criteria if DRWV determines there is probable cause to believe the health and safety of the individual is in serious and immediate jeopardy or in the case of death of the individual; and,
- If the entire record is requested, relevant case information may be copied (with the exception of the reporter's identity) and a reasonable charge may be assessed by the local department to cover the time and cost involved in the duplication and mailing of the material.

When Information is Released to the Courts

In some instances, courts will seek information for use in their proceedings.The order of appointment may be presented, as appropriate, to provide verification of the department's legal relationship to the protected person, and the scope of authority granted by the court (physician/medical treatment facilities, Veterans Administration, etc.).

7.12 Subpoenas, Subpoena duces tecum & Court Orders

The department may be requested by the court or other parties to provide certain information regarding SDM cases. See, *Legal Requirements and Processes Policy.*

7.13 Liability

Substitute decision-makers have a fiduciary duty to the protected person. A fiduciary duty means that a special relationship of trust, confidence, or responsibility exists. When the department is appointed to serve as SDM this duty legally obligates the department to act in the best interest of the protected person. An appointed SDM who fails to fulfill their fiduciary duty may be held personally liable for a breach of that duty, including being required to pay restitution for any embezzled or concealed funds. The guardian IS NOT liable for the acts of the protected person unless the guardian is personally negligent in carrying out their duties.

7.14 Conflict of Interest

To avoid any conflict of interest and ensure optimal client services, the APS worker must inform their supervisor immediately upon discovering that a friend, relative, or former coworker, and anyone with close ties to the worker has been assigned to the worker for investigation, assessment, or as an ongoing case. Upon this disclosure, the supervisor has the discretion to transfer the case to another worker, in

some instances to another county, and restrict the case for limited access. The supervisor will then be responsible for informing their program manager of this issue. In addition, APS workers should not solicit or accept any monetary gain for their services to the client other than their salary and benefits paid by the department.

7.15 Exceptions to Policy

In some circumstances exceptions to policy may be requested only after approval from the program manager. Exceptions will be granted on an individual case by case basis and only in situations where client circumstances are sufficiently unusual to justify the exception. However, such exceptions are to be requested ONLY after other methods and/or resources have been exhausted. In that event, requests must be submitted as a policy exception in CCWIS. The policy exception request is to be submitted by the APS worker to the supervisor. Upon supervisory approval, the request will be forwarded to the program manager for final approval/denial. The approving supervisor will alert the program manager that the request has been forwarded in CCWIS. Policy exception requests must include:

- Reference to the applicable policy section(s).
- Explanation of why the exception is requested.
- Alternate methods resources attempted.
- Anticipated impact if the policy exception is not granted.
- Efforts to resolve the situation.
- Information supporting the request.
- The time period for which the exception is being requested; and
- Other relevant information.

In an emergency, the request for a policy exception may be made to and approved by the program manager verbally. Once verbal approval is granted by the consultant, the request for policy exception and all supporting information must be entered and approved in CCWIS within five working days.

SECTION 8 - CASE CLOSURE

8.1 Case Closure - General

A guardianship case in which the department is the appointed guardian cannot be closed until the court issues an order terminating this appointment or, if the protected person is deceased, upon petition by the department requesting termination. The APS worker will attach a copy of the client's death certificate along with the final evaluation report *Petition for Termination, Revocation or Modification of Appointment* to the circuit clerk's office. The death certificate can be obtained through the State Registrar of Vital Statistics (304)558-8016. The death certificate can also be obtained from the funeral home or other entity that may be handling arrangements of the deceased body. Generally funeral homes do not charge a fee for providing a death certificate. If the department is charged a fee, the APS worker will obtain payment for this service through the local financial clerk. Reimbursement to the local department is accomplished via a demand payment in CCWIS. The case must not be closed until the demand payment in CCWIS has been generated. See, Other Demand Payments for further details. A final

assessment must be completed as part of the case review process prior to closure of the case. See, 3.7 Assessment Prior to Case Closure for detailed information.

Notification of Case Closure

If the case is closed for guardianship services, after a court decision, for any reason other than client death, written notification to the client or their legal representative is required. Notification is to be sent within five working days of the date services were terminated. A form letter titled Notification Regarding Application for Social Services *Negative Action Letter (SS-13)* is to be used for this purpose.

8.2 Client's Right to Appeal

A client or their legal representative has the right to appeal a decision by the department at any time for any reason. To request an appeal, the client or their legal representatives must complete the bottom portion of the *Notification Regarding Application for Social Services* and submit this to the worker's supervisor within 30 days following the date the action was taken by the department. The supervisor is to schedule a pre-hearing conference to consider the issues. If the client or their legal representative disagrees with the supervisor's decision, they will complete the *IG-BR-29*, and all related information is forwarded by the supervisor to the hearings officer for further review and consideration. See *Common Chapters* for specific information regarding grievance procedures.

SECTION 9 - NONDISCRIMINATION, PROCEDURE & DUE PROCESS STANDARDS, REASONABLE MODIFICATION POLICIES, AND CONFIDENTIALITY

9.1 Nondiscrimination

As a recipient of Federal financial assistance, the Bureau for Social Services (BSS) does not exclude, deny benefits to, or otherwise discriminate against any person on the ground of race, color, national origin, disability, age, sex, sexual orientation, gender identity, religion or creed in admission to, participation in, or receipt of the services and benefits under any of its programs and activities, whether carried out by BSS directly or through a contractor or any other entity with which BSS arranges to carry out its programs and activities.

This statement is in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (nondiscrimination on the basis of race, color, national origin) ("Title VI"), Section 504 of the Rehabilitation Act of 1973 (nondiscrimination on the basis of disability) ("Section 504"), the Age Discrimination Act of 1975 (nondiscrimination on the basis of age) ("Age Act"), regulations of the U.S. Department of Health and Human Services issued pursuant to these three statutes at Title 45 Code of Federal Regulations Parts 80, 84, and 91.

The Bureau for Social Services shall not retaliate against, intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title VI, Section

504 or the Age Act, or because she or he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing.

In addition, BSS will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all BSS programs, services, and activities. For example, individuals with service animals are welcomed in the Department of Human Services, BSS**,** officeseven where pets are generally prohibited.

In case of questions, or to request an auxiliary aid or service for effective communication, or a modification of policies or procedures to participate in a BSS program, service, or activity, please contact:

Children and Adult Services
Section 504/ADA Coordinator
350 Capitol St. Rm 691
Charleston, WV 25301
(304) 558-7980

9.2 Non-Discriminatory Placement Protocol

The department ensures that all parties involved in adult welfare programs have equal opportunities. All potential placement providers for vulnerable adults, are afforded equal opportunities, free from discrimination and protected under the Americans with Disabilities Act (ADA). The department will not deny a potential placement provider the benefit of its services, programs, or activities due to a disability.

Under the Americans with Disabilities Act it defines a person with a disability as: "An individual with a disability is defined by the ADA as a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment."

The ADA does not specifically name all the impairments that are covered. The ADA does not allow a person to be discriminated against due to a disability in employment, state and local government activities, public transportation accommodations, telecommunication relay services, fair housing, air carrier access, voting accessibility or education. Examples of disabilities include physical disabilities which require auxiliary aids and mental health issues. Those persons with substance use disorders, including opioid use disorder, currently participating in a treatment option such as Medication Assisted Treatment (MAT), are also covered by the ADA. Participation in a MAT program is not considered the illegal use of drugs. Qualifying MAT programs are defined in W. Va. Code §16-5Y-1, *et seq.* The ADA also addresses the civil rights of institutionalized people and architectural barriers that impact people with disabilities.

When making diligent efforts to locate and secure appropriate placement for vulnerable adults, a worker cannot discriminate against a potential placement based upon a person with a disability according to the Americans with Disabilities Act (ADA) Title II. The department shall determine if the potential placement

for the vulnerable adult represents a direct threat to the safety of the adult. Safety threat decisions will be based on assessment of the individual and the needs of the vulnerable adult, as the safety of the adult always remains at the forefront of the determination of the best interest of an adult, when placing a vulnerable adult in anyone's home. This determination cannot be based on generalizations or stereotypes of individuals.

If a provider protected under the ADA is identified as an appropriate and best interest placement for a vulnerable adult they may, at some point, require services specific to their disability in order to preserve the placement. In such situations, consideration for services must be given if it is in the best interest of the adult to preserve the placement. Any specific auxiliary aids or services should be determined by the worker at no cost to the provider and should be considered on a case by case basis.

9.3 Complaint Procedure and Due Process Standards

Complaints Based on Disability or other Forms of Discrimination

It is the policy of the West Virginia Department of Human Services (DHS), not to discriminate on the basis of race, color, national origin, disability, age, sex, sexual orientation, gender identity, religion, or creed. The department has adopted an internal complaint procedure providing for prompt, equitable resolution of complaints alleging discrimination. Laws and Regulations, 28 C.F.R. Part 35 and 45 C.F.R. Part 84, may be examined by visiting https://www.ada.gov/reg3a.html. Additional laws and regulations protecting individuals from discrimination in adult welfare programs and activities may be examined by visiting the U.S Department of Health and Human Services website at https://www.hhs.gov/civil-rights/for-individuals/special-topics/adoption/index.html.

Any person who believes someone has been subjected to discrimination on the basis of race, color, national origin, disability, age, sex, sexual orientation, gender identity, religion, or creed may file a complaint under this procedure. It is against the law for the Bureau for Social Services, including employees, contracted providers or other BSS representatives, to retaliate in any way against anyone who files a complaint or cooperates in the investigation of a complaint.

Procedure

Complaints due to alleged discriminatory actions must be submitted to the Department of Human Services, Equal Employment Opportunity (EEO)/Civil Rights Officer within 60 calendar days of the date the person filing the complaint becomes aware of the alleged discriminatory action.

The complainant may make a complaint in person, by telephone, by mail, or by email. To file the complaint by mail or email, a Civil Rights Discrimination Complaint Form, IG-CR-3 (See Appendix A) must be completed and mailed or emailed to the West Virginia Department of Human Services, Office of Human Resources Management, EEO/Civil Rights Officer, One Davis Square, Suite 400, Charleston, WV 25301 or email at DHHRCivilRights@WV.Gov. If the complainant requires assistance completing the IG-CR-3 form, they may request assistance from the department. The complaint must state the problem or

action alleged to be discriminatory and the remedy or relief sought. The complainant may also contact the WV DHHR, EEO/Civil Rights Officer, for more information.

West Virginia Department of Human Services
Office of Human Resource Management
EEO/Civil Rights Officer
(304) 558-3313 (voice)
(304) 558-6051 (fax)
DHHRCivilRights@WV.Gov (email)

The EEO/Civil Rights Officer shall conduct an investigation of the complaint. This investigation may be informal, but it must be thorough, affording all interested persons an opportunity to submit evidence relevant to the complaint. The EEO/Civil Rights Officer will maintain the files and records of Bureau for Social Services relating to such complaints. To the extent possible, and in accordance with applicable law, the EEO/Civil Rights Officer will take appropriate steps to preserve the confidentiality of files and records relating to complaints and will share them only with those who have a need to know.

The EEO/Civil Rights Officer shall issue a written decision on the complaint, based on the preponderance of the evidence, no later than 30 calendar days after its filing, including a notice to the complainant of his or her right to pursue further administrative or legal remedies. If the EEO/Civil Rights Officer documents exigent circumstances requiring additional time to issue a decision, the EEO/Civil Rights Officer will notify the complainant and advise them of his or her right to pursue further administrative or legal remedies at that time while the decision is pending. The person filing the complaint may appeal the decision of the EEO/Civil Rights Officer by writing to the Director of Human Resources within 15 calendar days of receiving the EEO/Civil Rights Officer's decision. The Director of Human Resources shall issue a written decision in response to the appeal no later 30 calendar days after its filing.

The person filing the complaint retains the right to file a grievance with the U.S. Department of Health and Human Services, Office for Civil Rights, regardless of the decision made by the West Virginia Department of Human Services.

The availability and use of this procedure does not prevent a person from pursuing other legal or administrative remedies, including filing a complaint of discrimination on the basis of race, color, national origin, disability, age, sex, sexual orientation, gender identity, religion or creed in court or with the US Department of Health and Human Services, Office for Civil Rights. A person can file a complaint of discrimination electronically through the Office for Civil Rights Complaint portal at: https://ocrportal.hhs.gov/ocr/smartscreen/main.jsf or by mail or by phone at:

U.S. Department of Health & Human Services
Office for Civil Rights
200 Independence Ave., S.W.
Room 509F HHH Bldg.

Washington, D.C. 20201
800-368-1019 (voice) 800-537-7697 (TDD)
OCRComplaint@hhs.gov

For complaints to the Office for Civil Rights, complaint forms are available at: https://www.hhs.gov/ocr/complaints/index.html. Complaints shall be filed within one hundred and eighty (180) calendar days of the date of the alleged discrimination.

The Bureau for Social Services will make appropriate arrangements to ensure that individuals with disabilities and individuals with Limited English Proficiency are provided auxiliary aids and services or language assistance services, respectively, if needed, to participate in this process. Such arrangements may include, but are not limited to, providing qualified interpreters, providing recorded material for individuals with low vision, or assuring a barrier-free location for the proceedings. The EEO/Civil Rights Officer will be responsible for such arrangements.

Grievances Regarding the Adult Services Worker or Casework Process

At any time that the Bureau for Social Services is involved with a client, the client, or the counsel for the vulnerable adult has a right to express a concern about the manner in which they are treated, including the services they are or are not permitted to receive.

Whenever a vulnerable adult or counsel for the vulnerable adult has a complaint about Adult Services or expresses dissatisfaction with Adult Services the worker will:

- Explain to the client the reasons for the action taken or the position of the BSS which may have resulted in the dissatisfaction of the client.
- If the situation cannot be resolved, explain to the client their right to a meeting with the supervisor.
- Assist in arranging for a meeting with the supervisor.

The supervisor will:

- Review all reports, records and documentation relevant to the situation.
- Determine whether all actions taken were within the boundaries of the law, policies and guidelines for practice.
- Meet with the client.
- If the problem cannot be resolved, provide the client with the form “Client and Provider Hearing Request”, IG-BR-29.
- Assist the client with completing the IG-BR-29, if requested.
- Submit the form immediately to the Chairman, state board of Review, DHHR, Building 6, Capitol Complex, Charleston, WV 25305.

For more information on Grievance Procedures for Social Services please see Common Chapters Manual, Chapter 700, and Subpart B or see W.Va. Code §29A-5-1.

Note: Some issues such as the decisions of the Circuit Court cannot be addressed through the Grievance Process. Concerns about or dissatisfactions with the decisions of the Court including any approved Case plan must be addressed through the appropriate legal channels.

9.4 Reasonable Modification Policy

Purpose

In accordance with the requirements of Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (ADA), the Bureau for Social Services shall not discriminate against qualified individuals with disabilities on the basis of disability in its services, programs, or activities. The BSS shall make reasonable modifications in Adult Services program policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless BSS can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

Policy

The department is prohibited from establishing policies and practices that categorically limit or exclude qualified individuals with disabilities from participating in the BSS Adult Services program.

The Bureau for Social Services will not exclude any individual with a disability from the full and equal enjoyment of its services, programs, or activities, unless the individual poses a direct threat to the health or safety of themselves or others, that cannot be mitigated by reasonable modifications of policies, practices or procedures, or by the provision of auxiliary aids or services.

The Bureau for Social Services is prohibited from making Adult Services program application and retention decisions based on unfounded stereotypes about what individuals with disabilities can do, or how much assistance they may require. The BSS will conduct individualized assessments of qualified individuals with disabilities before making Adult Services application and retention decisions.

The Bureau for Social Services may ask for information necessary to determine whether an applicant or participant who has requested a reasonable modification has a disability-related need for the modification, when the individual's disability and need for the modification are not readily apparent or known. BSS will confidentially maintain the medical records or other health information of Adult Services program applicants and participants.

The Bureau for Social Services upon request, will make reasonable modifications for qualified Adult Service program applicants or participants with disabilities unless BSS can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity. Individuals do not need to reference Section 504 or Title II or use terms of art such as “reasonable modification” in order to make a request. Further, BSS staff are obligated to offer such reasonable accommodations upon the identification of a qualifying disability or to an individual with Limited English Proficiency.

BSS must consider, on a case-by-case basis, individual requests for reasonable modifications in its Adult Services programs, including, but not limited to, requests for substitute caregivers, respite caregivers, more frequent support from a case worker, additional classroom and/or online training, mentorship with an experienced foster/adoptive parent, note takers, and other auxiliary aids and services. When auxiliary aids or language interpretation services to ensure effective communication for individuals with hearing, vision, speech impairments, or Limited English Proficiency (LEP) are needed, they shall be provided to the participant at no additional costs. The department evaluates individuals on a case by case basis to provide auxiliary aids and services as necessary to obtain effective communication. This would include but not be limited to:

- Services and devices such as qualified interpreters, assistive listening devices, note takers, and written materials for individuals with hearing impairments.
- And qualified readers, taped texts, and Brailed or large print materials for individuals with vision impairments.
- Access to language and interpretation services.

For more information on obtaining auxiliary aids, contact:

Center for Excellence in Disabilities (CED)
959 Hartman Run Road
Morgantown, WV 26505
Phone: 304-293-4692.
Toll Free: (888) 829-9426
TTY: (800) 518- 1448

For language translation and interpretation services Adult Services may Contact 911 Interpreters or the Section 504/ADA Coordinator (see also section 11.5 Limited English Proficiency). To contact 911 Interpreters, utilize the information below:

911 Interpreters Inc.
1-855-670-2500
BSS Code: 16233

When requesting language translation services directly through 911 Interpreters, staff must report the accommodation to the Section 504/ADA Coordinator by completing the *Reasonable Accommodation Reporting Form*.

The Bureau for Social Services will not place a surcharge on a particular qualified individual with a disability or any group of qualified individuals with disabilities to cover the cost of measures, such as the provision of auxiliary aids and services or program accessibility, that are necessary to provide nondiscriminatory treatment required by Title II of the ADA and Section 504.

To address any violations of this Reasonable Modification Policy, consult the Bureau for Social Services Grievance Procedure. To request reasonable modifications, or if you have questions, please contact:

Children and Adult Services
Section 504/ADA Coordinator
350 Capitol St. Rm 691
Charleston, WV 25301
(304) 558-7980
DHHRCivilRights@WV.Gov (email)

Staff who make reasonable accommodations for an individual must be reported to the Section 504/ADA Coordinator utilizing the *Reasonable Accommodation Reporting Form*.

9.5 Limited English Proficiency

The Bureau for Social Services (BSS) will take reasonable steps to ensure that persons with Limited English Proficiency (LEP) have meaningful access and an equal opportunity to participate in our services, activities, programs and other benefits. The policy of BSS is to ensure meaningful communication with LEP clients and their authorized representatives involving their case. The policy also provides for communication of information contained in vital documents, including but not limited to, information release consents, service plans, etc. All interpreters, translators and other aids needed to comply with this policy shall be provided without cost to the person being served, and clients and their families will be informed of the availability of such assistance free of charge. Language assistance will be provided through use of contracted vendors, technology, or telephonic interpretation services. All staff will be provided notice of this policy and procedure, and staff that may have direct contact with LEP individuals will be trained in the effective use of an interpreter and the effective use of technology including telephonic interpretation services. The Bureau for Social Services will conduct a regular review of the language access needs of our population, as well as update and monitor the implementation of this policy and these procedures, as necessary.

PROCEDURES:

IDENTIFYING LEP PERSONS AND THEIR LANGUAGE

The Bureau for Social Services will promptly identify the language and communication needs of the LEP person. If necessary, staff will use a language identification card (or "I speak cards," available online at www.lep.gov) or posters to determine the language. In addition, when records are kept of past interactions with clients or family members, the language used to communicate with the LEP person will be included as part of the record.

OBTAINING A QUALIFIED INTERPRETER

911 Interpreters Inc. has agreed to provide qualified interpreter services. The agency's telephone number is 1-855-670-2500 (BSS Code: 16233). Interpretation services are available 24 hours a day. Some LEP persons may prefer or request to use a family member or friend as an interpreter. However, family members or friends of the LEP person will not be used as interpreters unless specifically requested by that individual and **after** the LEP person has understood that an offer of an interpreter at no charge to the person has been made by the facility. Such an offer and the response will be documented in the

person's file. If the LEP person chooses to use a family member or friend as an interpreter, issues of competency of interpretation, confidentiality, privacy, and conflict of interest will be considered. If the family member or friend is not competent or appropriate for any of these reasons, BSS will provide qualified interpreter services to the LEP person free of charge. Children and other clients will **not** be used to interpret, in order to ensure confidentiality of information and accurate communication.

PROVIDING WRITTEN TRANSLATIONS

When translation of vital documents is needed, BSS will submit documents for translation to 911 Translators Inc. or the Section 504/ADA Coordinator**.** BSS will generally provide language services in accordance with the following guidelines:

(a) BSS will provide written translations of vital documents for each eligible LEP language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or

(b) If there are fewer than 50 persons in a language group that reaches the five percent threshold in (a), BSS will not translate vital written materials but will provide written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

Additionally, when making a determination as to what languages services will provided, BSS may consider the following factors: (1) the number and or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to the grantee/recipient and costs.

Documents being submitted for translation will be in final, approved form with updated and accurate information. Staff who utilize 911 Translators must report the utilization using the *Reasonable Modification Reporting Form* to the Section 504/ADA Coordinator.

Documents being submitted for translation will be in final, approved form with updated and accurate information. Staff who utilize 911 Translators must report the utilization using the *Reasonable Modification Reporting Form* to the Section 504/ADA Coordinator.

PROVIDING NOTICE TO LEP PERSONS

The Bureau for Social Services will inform LEP persons of the availability of language assistance, free of charge, by providing written notice in languages LEP persons will understand. At a minimum, notices and signs will be posted and provided in the department office lobbies and waiting areas. Notification will also be provided through one or more of the following: outreach documents and program brochures.

MONITORING LANGUAGE NEEDS AND IMPLEMENTATION

On an ongoing basis, BSS will assess changes in demographics, types of services or other needs that may require reevaluation of this policy and its procedures. In addition, BSS will regularly assess the efficacy of these procedures, including but not limited to mechanisms for securing interpreter services, equipment

used for the delivery of language assistance, complaints filed by LEP persons, feedback from clients and community organizations, etc.

APPENDIX A - DoHS CIVIL RIGHTS DISCRIMINATION COMPLAINT FORM

WEST VIRGINIA DEPARTMENT OF HUMAN SERVICES

STATE OF WEST VIRGINIA
DEPARTMENT OF HUMAN SERVICES
BUREAU FOR SOCIAL SERVICES

Civil Rights Discrimination Complaint Form

Complainant First Name		Complainant Last Name
Home Phone *(include area code)*		Work Phone *(include area code)*
Street Address		City
State	Zip Code	Email *(if available)*

Is this complaint being completed by someone other than the complainant? ☐ Yes ☐ No

If yes, please provide your information below:

First Name	Last Name	Telephone Number (include area code)

The complainant feels they have been discriminated against on the basis of:

☐ Race/Color/National Origin ☐ Religion/Creed ☐ Sexual Orientation/Gender Identity

☐ Disability ☐ Age ☐ Sex

Who or what bureau within the West Virginia Department of Health and Human Resources is believed to have been discriminatory?

Name/Bureau/Office		
Street Address	City	County
Zip Code	Telephone	

Date(s) discriminatory action is believed to have occurred:

Which program(s) is the complainant alleging the discriminatory action took place in?

☐ Child Welfare *(includes CPS, Youth Services, Foster Care, Adoption, home finding, and Legal Guardianship)*

☐ Adult Welfare *(includes APS, Guardianship, Health Care Surrogate, Residential Services Request to Receive and Request to Provide)*

☐ Low Income Energy Assistance Program (LIEAP)

☐ Temporary Assistance for Needy Families (TANF)

☐ School Clothing Voucher

☐ Indigent Burial

Complaints involving the Supplemental Nutrition Assistance Program (SNAP) must be sent directly to the U.S. Department of Agriculture. See below for more information.

Describe briefly what happened. How and why does the complainant believe they have been discriminated against? What is the relief or remedy sought by the complainant?

(*Attach additional pages as needed.)*

Please sign and date this form. If submitting by email, you may type your name and date. Your email will represent your signature.

Signature	**Date** (mm/dd/yyyy)

The West Virginia Department of Human Services shall not retaliate against, intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title VI, Section 504 or the Age Act, or because she or he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing.

EEO/Civil Rights Officer shall conduct an investigation of the complaint. This investigation may be informal, but it must be thorough, affording all interested persons an opportunity to submit evidence relevant to the complaint. EEO/Civil Rights Officer will maintain the files and records of DoHS relating to such grievances. The EEO/Civil Rights Officer shall issue a written decision on the complaint no later than thirty (30) calendar days after its filing, unless the Coordinator documents exigent circumstances requiring additional time to issue a decision. To submit this complaint or request additional information, please contact:

West Virginia Department of Human Services
Office of Human Resource Management
EEO/Civil Rights Officer
(304) 558-3313 (voice)
(304) 558-6051 (fax)
DHHRCivilRights@WV.Gov (email)

The person filing the grievance retains the right to file a grievance with the U.S. Department of Health and Human Services, Office for Civil Rights, regardless of the decision made by the West Virginia Department of Human Services. The availability and use of this grievance procedure does not prevent a person from filing a private lawsuit in Federal court or a complaint of discrimination on the basis of being a member of a protected class, with the:

U.S. Department of Health & Human Services
200 Independence Ave., S.W.
Room 509F HHS Bldg.
Washington, D.C. 20201
800-368-1019 (voice)
202-619-3818 (fax)
800-537-7697 (TDD)
OCRComplaint@hhs.gov (email)
The complaint form may be found at https://www.hhs.gov/ocr/complaints/index.html

For SNAP complaints, please contact the U.S. Department of Agriculture.

The USDA Program Discrimination Complaint Form, can be found online at: https://www.ocio.usda.gov/document/ad-3027, or at any USDA office. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form by mail, email, or fax to:
U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW Washington, D.C. 20250-9410
(202) 690-7442 (fax)
(866) 632-9992 (telephone)
program.intake@usda.gov (email)

Acknowledgement

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