



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
BUREAU FOR MEDICAL SERVICES

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**To:** All AD Waiver, TBI Waiver, and Personal Care Services Program Providers

**From:** LuAnn Summers, Program Manager AD Waiver  
Teresa McDonough, Program Manager TBI Waiver and Personal Care Services

**Date:** May 16, 2018

**RE:** Legal Guardian/legal representative: meeting attendance and signature Requirements (Includes individuals using Traditional and Personal Options Service Models)

There has been considerable confusion regarding the roles and responsibilities of Legal Guardians and/or Legal Representatives as defined in the Glossary sections and used throughout the AD and TBI Waiver policy manuals. This Memorandum is to provide clarification and give notice of a change regarding the daily initialing of the Personal Attendant Log (PAL), the Personal Attendant Worksheet (PAW), Service Plan development attendance, and signatures from the Bureau for Medical Services (BMS).

There are various types of legal representatives, including but not limited to: Guardians, conservators, power of attorney representatives, health care surrogates and representative payees. Each type of legal representative has a different scope of decision-making authority. For example, a court-appointed conservator might have the power to make financial decisions, but not health care decisions. The RN and/or Case Manager should verify that a representative has the necessary authority and obtain copies of supporting documentation, e.g., court orders or power of attorney documents, for the participant's file.

**Legal representatives must always be consulted for decisions within their scope of authority.** However, contact with or input from the legal representative should not replace contact and communication with the participant. If the participant can understand the situation and express a preference, they must always be consulted.

**ADW and TBIW:**

A court appointed Legal Guardian must attend the initial, six month and annual assessments along with the Service Plan development meetings. They are required to sign these documents along with the initial and annual MNER. They are no longer

required to initial the daily PAL or PAW or sign these documents every two weeks. Determining whether the services listed on the participant's Service Plan have been provided is the responsibility of the Personal Attendant Agency. The Personal Attendant is still required to initial they have provided the services daily. If the participant has the ability to make their mark and know they have received their services, then they would need to initial for daily services. If they are not, then another individual can initial to serve as a witness. A witness could be someone who also lives in the home or nearby to the participant such as a family member or neighbor that could verify that the services were provided.

A Medical Power of Attorney is no longer required to initial the daily PAL or PAW or sign these documents every two weeks. Determining whether the services listed on the participant's Service Plan are appropriate and necessary is the responsibility of the Personal Attendant Agency. The Personal Attendant is still required to initial they have provided the services daily. Again, if the participant is able to make their mark and know they have received services, then they would need to do so. If they are not, then another individual can initial to serve as a witness. A witness could be someone who also lives in the home or nearby to the participant such as a family member or neighbor that could verify that the services were provided.

### **Personal Care Services:**

A court appointed Legal Guardian must attend the Initial, six month and annual assessments - along with Plan of Care development meetings. They are required to sign these documents along with the initial and annual PC-MNER. They are no longer required to initial the daily Plan of Care Direct Care Worker (DCW) Worksheet or sign these documents every two weeks. Determining whether the services listed on the member's Plan of Care have been provided is the responsibility of the Direct Care Worker Agency. The DCW is still required to initial they have provided the services daily. If the member has the ability to make their mark and know they have received their services, then they would need to initial for daily services. If they are not then, another individual can initial to serve as a witness. A witness could be someone who also lives in the home or nearby to the member such as a family member or neighbor that could verify that the services were provided.

A Medical Power of Attorney is no longer required to initial the daily Plan of Care DCW Worksheets or sign these documents every two weeks. They are no longer required to attend the Initial, six month and annual assessments-along with the Plan of Care development meetings.

