

MiPCT Care Management Webinar

Rethinking Guardianship

1-16-15



2015 MiPCT Care Manager Webinars - New Registration Process

- **MiPCT CM Webinar Registration:** You may register using the following two methods
 1. On the www.mipct.org web site:
<http://mipct.org/care-manager-webinar-conference-call-calendar/>
 2. By e-mail notification which will contain a MiPCT Care Manager Webinar Registration link
- To view calendar of upcoming MiPCT CM Webinars visit
<http://mipct.org/care-manager-webinar-conference-call-calendar/>
- The MiPCT CM webinar recordings, slides and handouts will be posted within 2 weeks of the live Webinar on
<http://mipct.micmrc.org/webinar-information>
Note: this web page requires a user ID and password
- If you have any questions, please submit to mipctdemo@michigan.gov

2015 MiPCT Care Manager Webinars - New Registration Process

mipctdemo.org (click on "Care Manager Webinars Calendar")

The screenshot shows a web browser window with the URL mipctdemo.org/care-manager-webinar-conference-call-calendar/ highlighted in yellow. The website header includes navigation links: Home, MiPCT FLASH Publications, About MiPCT, Resources, For Patients - Information & Tools, Subscribe, Posts, Comments, Care Management Resource Center, MiPCT CCM Course Online Registration, Pediatric Care Managers, Care Manager Webinars Calendar, and Contact Us. The main banner features the text "MiPCT Demonstration Project" and "We can do this together. We can make care better!" with a search bar.

The main content area is titled "Care Manager Webinars Calendar" and "Upcoming 2015 MiPCT Care Manager Educational Webinars". It contains three blue asterisk icons followed by links:

- For details regarding new 2015 MiPCT Care Manager Registration Process, [CLICK HERE!](#)
- [CLICK HERE for a CALENDAR of MiPCT CM Educational Webinars](#)

Below these links, a paragraph states: "In 2015, MiPCT will offer Care Manager educational webinars monthly. Please check the above calendar link for the upcoming MiPCT Care Manager webinar dates and topics."

The third link is: [MiPCT Care Manager Webinar Registration](#)

January 2015

Topic: [MiPCT Pediatric Webinar: Rethinking Guardianship](#)

- **Presenter:** Dohn Hoyle
- **Date:** Friday, January 16, 2015
- **Time:** 10:00 – 11:00 AM
- **Register [HERE!](#)**

On the right side, there are three sections:

- Upcoming Events**
 - 2/9--MiPCT CCM Course Training Begins (2/9-2/12, 2015)
 -
 - 3/9--MiPCT CCM Course Training Begins (3/9-3/12, 2015)
- Featured Links**
 - [Click HERE for the MDCH Primary Care and Public Health Webpage](#)
 -
 - [To see a calendar of CM Webinars, Click Here](#)
 -
 - [Share Your Care Management Stories of Success Here](#)
 -
 - [Patient Advisory Council Nomination Form](#)
- Upcoming MiPCT Care Manager Webinars**
 - [Please see Featured Links above for the 2015 CM Webinars.](#)

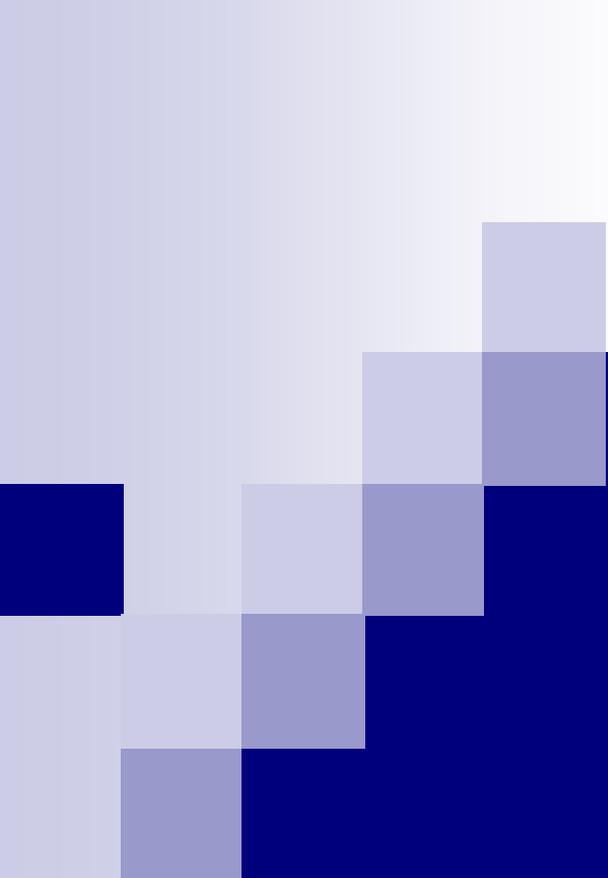
The bottom of the browser window shows a Windows taskbar with open applications: Microsoft Outlook, Presentation1 - M..., New folder, and MiPCT Demonstr... The system tray shows the time as 11:42 AM on 1/14/2015.

MiPCT CM Webinar: “Rethinking Guardianship”

Guest Presenter:

Don Hoyle, BA

Executive Director The Arc Michigan

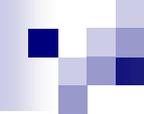


AGE OF MAJORITY

DOHN HOYLE

1325 S. Washington Ave
Lansing, MI. 48910
(517) 487-5426
www.arcmi.org

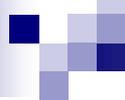




AGE OF MAJORITY

**When Children with Disabilities Become Adults
(18th Birthday)**

- **SSI – Medicaid**
- **Decision Making**

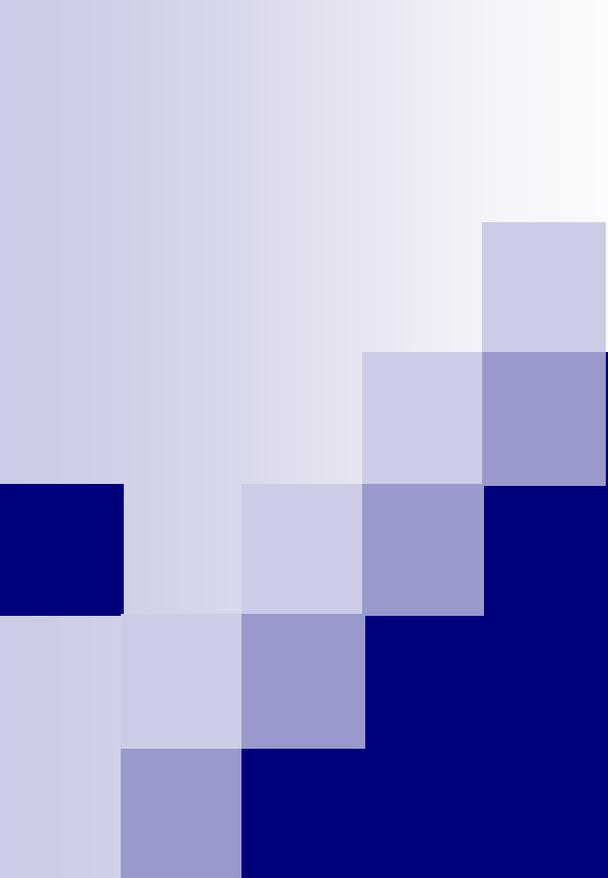


MEDICAID THROUGH SSI ELIGIBILITY

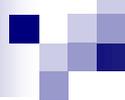
**A Disabled Adult Child's Income from
Social Security Benefits* is Treated
Differently if they are SSI Eligible****

*Benefits from a parent's SS account when a parent is disabled, retires or dies

**Eligible – Even if the unearned income from SS benefit means they no longer receive a check

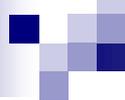


RETHINKING GUARDIANSHIP – Supported Decision Making



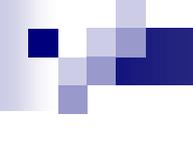
Summary Statement

Every person can make choices and has a right to make decisions. People who have a cognitive or intellectual disability may express those choices/decisions in non-traditional ways. Any legal system or proceeding which deprives an individual of her/his right to be accommodated and supported in choosing and making decisions and which appoints a substitute decision-maker based on tests of competence, makes that person vulnerable and deprives him/her not only of his/her right to self-determination but also of other rights which should be inalienable.



TASH RESOLUTION

“Be it resolved that TASH, an international advocacy association of people with disabilities, their family members and other advocates, and people who work in the disability field affirms the rights of persons with disabilities and commits to the promotion and use of alternatives to guardianship rather than the removal of said rights. TASH urges the development and promotion of the use of accommodations and supports people need to make choices and decisions, to have their preferences recognized and honored, and to have their rights to self-determination protected.”

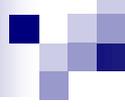


Guardianship is a situation,
recognized by law, under which
one person or entity exercises
power over and on behalf of
another person.

("a ward")

PAST REASONS FOR SEEKING GUARDIANSHIP?

- **Medical reasons**
- Contracts
- Decisions about programs, records, etc.
- Administrative convenience
- Financial decisions
- Placement decisions
- Sex and related issues
- What will happen when parents or family are no longer around?



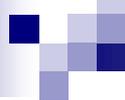
WHY AVOID GUARDIANSHIP?

- Avoid public declaration of incompetency
- Promote independence, dignity, freedom of choice
- People deal with guardian – not person
- Expense – attorneys, hearings, evaluations
- Courts don't always follow law (partial vs. plenary, promote independence, etc.)

WHY AVOID GUARDIANSHIP?

(cont'd)

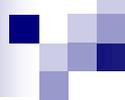
- Very difficult to modify or terminate
- Attorneys and G.A.L.s – very little training
- Corporate guardian problems – take money & independence
- It simply doesn't do what you want it to do!



Connecticut Supreme Court

“Guardians appointed by the court whether limited or plenary, can be vested with substantial powers over a respondent. Therefore...the appointment of a guardian implicates a respondent’s constitutional rights...”

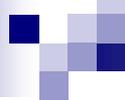
(Oller vs. Oller-Chiang, 1994)



Iowa Supreme Court

Guardianship “...involves significant loss of liberty similarly to that present in an involuntary civil commitment for treatment of mental illness.”

(In Re: Hedin, quoting Arizona Court of Appeals)



California Supreme Court

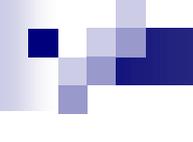
“[A person who has] a conservator
[appointed] may be subject to
greater control of his or her life than
one convicted of a crime”

1990 Guardianship Filings

STATE

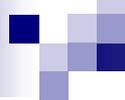
NUMBER OF FILINGS

	Total	Per 100,000
Alaska	234	51.6
Arkansas	2,871	122.1
Colorado	1,169	35.5
Connecticut	4,313	131.2
Delaware	173	26.0
District of Columbia	106	17.5
Florida	7,641	59.1
Georgia	5,762	88.9
Hawaii	474	40.2
Idaho	463	43.9
Indiana	6,090	109.8
Massachusetts	5,093	84.7
Michigan	18,870	203.0
Missouri	2,841	55.5
Nevada	837	69.6
New Hampshire	906	81.7
New York	1,597	8.9
Ohio	6,963	63.8
South Dakota	708	101.7
Vermont	968	172.0
Virginia	651	10.5
Washington	2,632	54.1



“The typical ward has fewer rights than the typical convicted felon – they no longer receive money or pay their bills. They cannot marry – or divorce... it is, in one short sentence, the most punitive civil penalty that can be levied against an American citizen, with the exception of...the death penalty”

-Claude Pepper, U.S. Representative



Iowa Supreme Court

“In making a determination as to whether a guardianship should be established...the court must consider the availability of third party assistance to meet a ...proposed ward’s need for such necessities...”

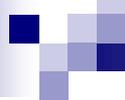
(in the Matter of Hedin, 1995)

Utah Supreme Court

(re: “Responsible Decisions”)

“...responsible focuses the appointing authority’s attention on the *content* of the decision rather than on the ability of the individual to engage in a rational decision making *process*.”

(In re: Boyer)



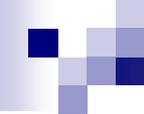
Pennsylvania Supreme Court

“Persons cannot be deemed incapacitated if their impairments are counterbalanced by friends, family or other support.”

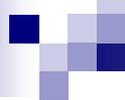
In re: Perry, 727 A2d 539 (Ps. Sup. Ct. 1999)



The vast majority of those who end up petitioning the court to appoint a guardian for some person are either related to the person or a friend



However, most petitioners do not come to the decision to seek guardianship on their own, but are encouraged to do so by someone else



Michigan Mental Health Code

“Guardianship ... shall be utilized only as is necessary to promote and protect the well-being of the individual...”

(MCL 330.1602(1))

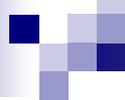
ALTERNATIVES

- Advisors, Advocates
- Person-Centered Planning
- Power of Attorney
- Durable Power of Attorney
- Durable Power of Attorney for Health Care or Designation of Patient Advocate
- Protective Orders
- Trusts
- Contracts –
Void vs. Voidable
- Finances
 - Representative Payee
 - Limited Bank Account
 - Co-signers
 - Ceiling Limit Account
 - Pour-over Account

Person Centered Planning

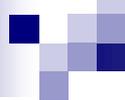
“Person-centered planning’ means a process for planning and supporting the individual receiving services that builds upon the individual’s capacity to engage in activities that promote community life and that honors the individual’s preferences, choices and abilities. The person-centered planning process involves families, friends, and professionals as the individual desires or requires” MCL 330.1700 (g)

Michigan’s Long Term Care Group Report and Recommendation,
June 2000



Person Centered Planning

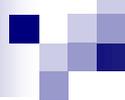
- Preferences determined by person centered planning process are honored unless harmful to the individual
- This process of determining preferences and choices enhances the dignity and self-determination of individuals
- This process is more reliable than having a court-appointed person to make decisions with or without input from anyone.



Michigan Social Welfare Act

MCL 400.66h

- ❖ Affirms a person's right to provide consent to treatment and have wishes followed when receiving government assistance (i.e., Medicaid).
- ❖ If the individual is unable to make medical decisions, then providers are required to obtain written consent of individual's nearest relative, guardian or parent except in emergencies.



Medical Power of Attorney

- Appoint an Agent to handle medical decisions or support you in medical decisions
- Can be effective immediately
- Can be as broad or narrow as desired

Patient Advocate Designations (PADs) for Medical Decisions

- Exercisable only in event the person is unable to make their own medical decisions (certified by two physicians)
- Can be individual 18 or over to exercise powers related to care, custody and medical treatment decisions of the person.
- Includes the individual's preferences regarding care and treatment.
- Necessary for withdrawal of life-sustaining treatment.
- New Michigan law also permits PADs for mental health decisions. This is also a preferred alternative to "Kevin's Law" (court-ordered, outpatient treatment).

(Sample only – revise language or content to reflect the understanding and circumstances of the person signing.)

POWER OF ATTORNEY FOR MEDICAL TREATMENT DECISIONS

I am _____. I live at _____. I want _____
to help me if I am sick and if I need to go to the doctor.

My mother/father read this paper to me before I signed it. I understand what he/she told me about this paper before I signed it.

If I am sick, my mother/father should take me to the doctor. If she/he is not at my house when I become sick, please call her/him to come to the doctor's office. I would like the doctor to talk to her/him and tell her/him what the matter is.

I would like to ask my mother/father what the doctor should do. I would like the doctor to do what my mother/father tells the doctor to do; she/he knows what is best for me.

Sometimes a doctor says that I need to have a shot or some other care. Sometimes a doctor says that I need to take pills or medicine. My mother/father will also decide what other care I should have, but she/he will talk to me about what care I need.

I would also like my mother/father to decide if I need to go to the dentist.

If I am very sick, I might need to go to a hospital. My mother/father can decide if I need to go to the hospital. I would like all of the people at the hospital to speak with my mother/father about what the people at the hospital should do for me. I would like my mother/father to decide about my care at the hospital even if I am unable to understand what my doctor says about me. This is very important since I want the people at the hospital to try very hard to care for me if I am sick. If I need to have an operation because I am very sick, I would like the people at the hospital talk to my mother/father. My mother/father will say "yes" or "no" and that is what the people at the hospital will do.

I understand that I want my mother/father to help decide what care I need, and I want people to listen to him or her about my care. If my mother/father is not happy with my doctor, then he or she is able to get another doctor to care for me.

(Signature or Mark)

(Date)

(Witness)

(Date)

(Witness)

(Date)

DESIGNATION FOR DURABLE POWER OF ATTORNEY FOR MEDICAL TREATMENT, RESIDENTIAL PLACEMENT, AND PROGRAM DECISIONS

I am _____ and I live at _____. I want my mother, _____ to help me if I am sick and need to see a doctor. I want her to make decisions about my medical care, including medication and surgery.

I also want my mother, _____ to make decisions about where I will live. She can sign any papers needed to arrange for a place for me to live.

I also want her to make decisions about work and other programs that I participate in.

If my mother, _____ is not available, I would like my _____, _____ to make these decisions instead.

If neither of the above are available, I would like my _____, _____ to make these decisions.

I would like these powers to last even if I become unable to understand this form in the future. I understand that if I want to change my mind about who makes these decisions, I can destroy this paper or let people know I want to change my mind.

(Date)

(Signed)

STATEMENT OF WITNESSES

We sign below as witnesses. This was signed in our presence. The signer appears to be of sound mind, and to be making this designation voluntarily, without duress, fraud or undue influence.

Signed by witness: _____

(Print full name)

Signed by witness: _____

(Print full name)

CONSENT TO AUTHORIZE ADVOCACY AND RELEASE OF INFORMATION

I, _____ hereby authorize Community Mental Health to release/ exchange information with my parents, _____, which pertains to my services, programs and living situation. I also wish that my parents be invited to any and all meetings about me, and I do not want any decisions made without their input. If CMH has any documents I need to sign, my parents must sign first to acknowledge their receipt of these documents and their concurrence with them, before I will sign. This authorization, unless otherwise revoked by me, is intended to remain in effect for the duration of time I receive mental health services, etc. or until I revoke this authorization, whichever comes first.

(name)

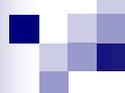
(date)

CONSENT TO AUTHORIZE ADVOCACY AND RELEASE OF INFORMATION

I, _____, hereby authorize
_____ Schools to release / exchange
information with my parents, _____
_____, which pertains to my
school program and placement. I also wish that y parents be
invited to any and all meetings about me, and I do not want
any decisions made without their input. If the schools have any
documents I need to sign, my parents must sign first, before I
will sign. This authorization, unless otherwise revoked by me, is
intended to remain in effect for the duration of time I receive
special education services or until my twenty-seventh birthday,
whichever comes first.

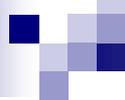
(name)

(date)



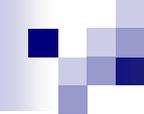
Estate Planning for People with Disabilities

Estate Planning for people with disabilities is generally done to preserve eligibility for governmental benefits that provide essential services.



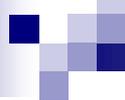
Benefits of Amenities Trusts

- Preserves Eligibility for Government Benefits
- Provides for an enhanced quality of life for the beneficiary
- Provides for Trustee to Act as an Advocate



“ A person’s impairment does not diminish the right of that person to exert choice and control about his or her life or to fully participate in the economic, political, social cultural, and educational mainstream of society.”

Arlene Kanter



Finding Additional Information:

The Arc Michigan

www.arcmi.org/new/info.htm

Michigan Alliance for Families:

www.michiganallianceforfamilies.org/resources/guardianship

Transition Series webinars:

www.michiganallianceforfamilies.org/webinar

www.youtube.com/user/MichiganAlliance/featured

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Look for us on 



www.arcmi.org