

DEPARTMENT OF SOCIAL SERVICES

CHILDREN'S DIVISION

P. O. BOX 88

JEFFERSON CITY, MISSOURI

February 6, 2013

M E M O R A N D U M

What's Inside:

Planning and process for youth in need of supported living, guardianship and/or conservatorship

TO: REGIONAL EXECUTIVE STAFF, CIRCUIT MANAGERS, AND CHILDREN'S DIVISION STAFF

FROM: CANDACE A. SHIVELY, DIRECTOR

SUBJECT: INTRODUCTION OF POLICY AND PROCEDURES FOR THE PROCESS OF TRANSITIONING YOUTH INTO INDIVIDUALIZED SUPPORTED LIVING, GUARDIANSHIP OR CONSERVATORSHIP

DISCUSSION:

The purpose of this memorandum is to introduce policy and procedures for assisting youth in need of services transitioning from alternative care to adult guardianship and/or conservatorship or supported living through another agency such as Department of Mental Health (DMH) or Department of Health and Senior Services (DHSS).

Consideration and planning must occur for youth who will continue to need supported care after transition to adulthood. There are several options available in assisting youth prior to termination of juvenile court jurisdiction to ensure the youth is not left without resources upon reaching adulthood. These include:

- Community services and resources;
- Execution of a power of attorney, durable power of attorney or durable power of attorney for healthcare; or
- Guardianship and/or conservatorship.

Community Services and Resources

Community services and resources should be explored first as the least restrictive option for youth who will require supportive assistance when transitioning from care. Community resources and services include, but are not limited to:

Individualized Supported Living (ISL) is a non-facility based form of residential living which provides support and training service to an individual in the individual's own residence. ISL can, in many cases, allow individuals with even the most severe disabilities the opportunity for community living if the individual's health and safety can adequately be maintained. Group homes and other residential placements which are more traditional in style than an ISL are also offered.

Consumer Directed Support is another available option for consideration. With this service, the consumer has a budget for services set aside and hires his or her own staff to provide the needed services. This is especially useful as an alternative to communal living or ISL placement, but also as an alternative to many other services an individual may need such as day-to-day living assistance (day program) or supported employment.

[Comprehensive Psychiatric Services](#) are offered through the Department of Mental Health. Services such as Targeted Case Management, Community Psychiatric Rehabilitation, and Outpatient Community-Based Services are available.

[Vocational Rehabilitation](#) offers services in vocational rehabilitation, independent living, and disability determination.

[Social Security Benefits](#) may be available for a youth who meets prescribed disability criteria as defined by the Social Security Administration. This may consist of monthly payments through the Supplemental Security Income (SSI) program or through the Social Security Disability Income (SSDI) program. An application for SSI or SSDI may be made by or on behalf of a disabled youth in foster care in Legal status 1 up to 90 days before foster care payments are expected to end. SSI or SSDI may cover the room and board expenses for individuals in placement with an agency and the agency can be made the payee for benefits. The local Social Security Administration office will be able to assist in determining which program the youth may be eligible. If the SSDI benefit is less than the SSI maximum, a youth may be eligible for both programs. When a youth in CD custody could be considered disabled, the youth's case manager should promptly explore the possibility of filing an application for social security benefits or supplemental security income benefits by contacting their IV-E Eligibility Specialist.

The [Individuals with Disabilities Education Act \(IDEA\)](#) ensures youth with disabilities receive individualized supports and services to successfully complete high school and transition to post-secondary education, employment, and adult life. The Individualized Education Program (IEP) plan establishes formation of concrete goals with measurable outcomes based on each individual's future plans. At age 14 the plan must address what instruction will assist the youth to prepare for transition. By age 16 the IEP must state what transition services the child needs, and specify interagency responsibilities or necessary connections.

[Adult Education and Literacy](#) instruction is designed to expand the educational opportunities for adults and to establish programs which will enable adults to acquire basic skills necessary to function in society. It will allow individuals to secure training which will enable them to become more employable, productive, and responsible citizens while allowing them to continue their education to at least the level of completion of secondary school.

[Missouri Protection and Advocacy Services](#) is a federally mandated system which provides protection of the rights of persons with disabilities through legally-based advocacy.

Older Adults Transportation Service ([OATS](#)) and Southeast Missouri Transportation Service ([SMTS](#)) provide reliable transportation for disadvantaged Missourians so they can live independently in their own communities. OATS and SMTS help people all over Missouri get to work, doctor appointments, essential shopping, and other necessary

destinations. OATS and SMTS are not-for-profit public transportation systems and serve 107 counties in Missouri. [Missouri's Public Transportation System](#) is available in seven urban areas throughout the state.

The Missouri Disability Portal is provided by the Governor's Council on Disability and is designed to connect the public with national, state and local disability resources according to their inquiries and interests. [Disabilityinfo.mo.gov](#) provides a menu bar to major categories such as employment, education, housing, transportation and health for disability services and service providers.

2-1-1 The national 2-1-1 initiative seeks to reserve these three digits nationwide as quick, easy to remember telephone number for finding human services answers. 2-1-1 is an information and referral line which connects people to vital social services provided by a range of nonprofit and government agencies. Services vary from community to community but provide callers with a wide range of information and referrals to human services for every day needs and in times of crisis.

EXECUTION OF A POWER OF ATTORNEY, DURABLE POWER OF ATTORNEY, OR DURABLE POWER OF ATTORNEY FOR HEALTHCARE

These documents allow someone to appoint another person to make decisions for him or her. To execute a power of attorney, durable power of attorney or a durable power of attorney for healthcare, the youth cannot be disabled or incapacitated. Each of these documents allows the youth to appoint another person, called an attorney in fact, to make certain decisions on his or her behalf. The decisions which can be made by the attorney in fact must be specified in the power of attorney document.

A durable power of attorney for healthcare allows the attorney in fact to make specified healthcare decisions, which may include the decision to withhold or withdraw life prolonging procedures. Employees of the Department of Social Services and Department of Mental Health are prohibited by law from being appointed as an attorney in fact unless the employee is closely related to the youth.

A power of attorney which is not durable expires if the youth becomes disabled or incapacitated. A power of attorney which is not durable also expires at the end of one year or when specified in the document if earlier than one year. A durable power of attorney or durable power of attorney for healthcare does not expire in the event of disability or incapacity and may be of such duration as specified in the document or after the death of the youth when probate issues are resolved.

The Missouri Bar has available "[Durable Powers of Attorney](#)" and "[Guardians and Conservators under Missouri Law](#)" resource guides and an accompanying [HIPAA form](#) which further explains this option. The decision on whether a youth wishes to execute a power of attorney of any type is an important legal decision with important consequences. If the youth is competent to make his/her own decisions and is competent to execute a power of attorney, the youth should be given an opportunity to consult with his/her guardian ad litem or his/her own attorney for legal advice before the youth is asked to sign a power of attorney of any kind. CD personnel should not give legal advice to the youth.

GUARDIANSHIP AND/OR CONSERVATORSHIP

A guardianship may be pursued by the Children's Division, CD, with assistance from the Division of Legal Services, DLS, for a youth between the ages of 18 and 21 when the youth has a physical or mental condition and is unable to make decisions regarding their own safety and well-being. A conservatorship may be pursued when a youth between the ages of 18 and 21 is unable due to a physical or mental condition to effectively manage his or her financial resources.

A guardianship and conservatorship often are pursued together, but obtaining both may not be necessary in all cases. A guardianship or conservatorship may be full or partial depending upon the extent of the physical or mental condition of the youth.

A full guardianship or conservatorship means the youth is presumed to be incompetent and significantly limits the youth's personal rights to make decisions and perform many activities enjoyed by other citizens. Therefore, pursuance of a full guardianship or conservatorship should be carefully considered.

A limited guardianship/conservatorship does not render the youth presumptively incompetent for all activities. The activities the youth needs assistance performing will need to be clearly outlined so the youth will retain the legal right to perform those activities not specified in the court's order without the assistance of a guardian or conservator.

The least restrictive environment to meet the youth's physical and mental health needs should be considered by the Family Support Team. Coordination should occur with the Department of Mental Health and the Division of Developmental Disabilities if the youth is currently receiving services or involvement is necessary. Some youth receiving these services while in care may not need continued care or a guardianship arrangement.

Referrals to the Division of Legal Services

The decision whether or not a youth needs a legal guardian or conservator or is eligible for a guardian/conservator is a question of both fact and law. If a guardianship or conservatorship is the case goal, a referral must be made to the Division of Legal Services (DLS) at least 6 months prior to child attaining the age of 21 (or the date that the guardianship needs to be effective) so that DLS can file a petition and have the case heard by the probate court prior to child attaining the age of 21. Whether statutory grounds exist to pursue a guardianship/conservatorship is a legal determination. DLS and CD will need to meet to staff the case so DLS can determine whether there are legal grounds to file a petition for guardianship/conservatorship. When making the referral to DLS, the following documents must be attached to the request for legal assistance:

1. The name, age, address of the incapacitated person if known, and if any of these facts are unknown, the efforts made to ascertain them;
2. The estimated value of the incapacitated person's real and personal property; (furniture, clothing, DVD's, CD's, computer, TV etc. and monthly income, bank accounts, kids accounts, income from employment, SSI, disability, etc.)

3. The county in which the property of the incapacitated person, or a major part thereof, is located,(including bank accounts, furniture etc);
4. The name and address of the parents of the incapacitated person and whether they are living or deceased or their rights have been terminated and when;
5. The name and address of any spouse and the names, ages, and addresses of any living children of the incapacitated person;
6. The name and address of the person(s) having custody of the person of the incapacitated person;
7. The name and address of any guardian of the person or conservator of the estate of the incapacitated person appointed in this or any other state;
8. If appointment is sought for a person other than the public administrator, the names and addresses of wards and disabled persons for whom that person is already guardian or conservator;
9. A description of the wards disabilities and medical records (e.g. psychological evaluation) substantiating those disabilities. This is very important. DLS will need all records concerning the child's disabilities including, but not limited to:
 - therapists records;
 - psychiatric/psychological evaluations;
 - all medical records indicating that the ward is unable, by reason of some specified physical or mental condition, to receive and evaluate information or to communicate decisions to such an extent that the person lacks capacity to meet essential requirements for food, clothing, shelter, safety, or other care such that serious physical injury, illness, or disease is likely to occur;
 - records from vocational rehabilitation; and
 - records from schools and other institutions which contain information regarding the youth's functional/educational limitations;

All medical information concerning the wards disabilities must be reasonably current. A psychological, medical or vocational rehabilitation evaluation more than a year old is too remote to prove the present condition of the ward and that he/she is presently in need of a guardian. If a guardianship/conservatorship is indicated the case manager must make arrangements for the youth to receive a complete evaluation by a licensed, competent professional which must be completed no later than 6 months before the hearing is set on the petition

10. The reasons why the appointment of a guardian is necessary (which will probably be included in the answer to #9 above);
11. The contact information for all doctors, caretakers and CD workers who could testify or provide other information concerning the extent of the wards disabilities;
12. Juvenile case number and date of order granting CD legal custody of the ward;
13. County of juvenile jurisdiction;
14. Street address and County of ward's current residence and name of facility in which ward resides, if applicable.

There may be additional information that DLS will need depending upon the facts of a particular case. The DLS attorney assigned to the case will let the worker know if additional information is needed. It is imperative all information needed to file a

guardianship/conservatorship petition is sent to DLS in a timely manner or DLS will not pursue a guardianship/conservatorship.

Guardianship and Conservatorship and related definitions, effects of Guardianship/Conservatorship, steps to be taken when a youth is in need of this continued support, youth with special needs, and considerations for youth exiting care have been added to the Child Welfare Manual.

NECESSARY ACTION

1. Review this memorandum with all Children’s Division staff.
2. Review revised Child Welfare Manual chapters as indicated below.
3. All questions should be cleared through normal supervisory channels and directed to:

PDS CONTACT

Sally A. Gaines
573-522-6279
Sally.A.Gaines@dss.mo.gov

PROGRAM MANAGER

Amy Martin
573-751-3171
Amy.L.Martin@dss.mo.gov

CHILD WELFARE MANUAL REVISIONS

- [Section 4, Chapter 21 Index](#)
- [Section 4 Chapter 21.3.6 Youth with Special Needs](#)
- [Section 4, Chapter 21.3.7 Education and Training Vouchers \(Renumbered\)](#)
- [Section 4, Chapter 21.3.8 Educational Opportunity for Children of Families Serving in the Military \(Renumbered\)](#)
- [Section 4, Chapter 21.3.9 State Youth Advisory Board \(Renumbered\)](#)
- [Section 4, Chapter 21.7 Exit Plan](#)
- [Section 4, Chapter 21.7.1.1 Guardianship and Conservatorship](#)
- [Section 4, Chapter 21.7.1.2 Effects of Guardianship and Conservatorship](#)
- [Section 4, Chapter 21.7.1.3 Steps to Be Taken](#)

FORMS AND INSTRUCTIONS

[DLS Referral Form](#)

REFERENCE DOCUMENTS AND RESOURCES

The Missouri Bar:
http://www.mobar.org/uploadedFiles/Home/Publications/Legal_Resources/Brochures_and_Booklets/Probate_Law_Resource_Guide/guardians.pdf
http://www.mobar.org/uploadedFiles/Home/Publications/Legal_Resources/Brochures_and_Booklets/Probate_Law_Resource_Guide/dpa.pdf
<http://www.mobar.org/publications/dpa/>
Department of Health and Senior Services:
<http://health.mo.gov/seniors/ombudsman/pdf/GuardianshipAndConservatorshipFAQ.pdf>
Missouri Protection and Advocacy Services:
http://www.moadvocacy.org/Manuals/Guardianship_Conservatorship_2007.pdf

RELATED STATUTE

Chapter 475 – Probate Code – Guardianship
<http://www.moga.mo.gov/STATUTES/C475.HTM>
Fostering Connections and Increasing Adoptions Act (2009)

ADMINISTRATIVE RULE N/A
COUNCIL ON ACCREDITATION (COA) STANDARDS PA-FC 13
CHILD AND FAMILY SERVICES REVIEW (CFSR) CFSR instrument, Item 8, Reunification, Guardianship, Relative Care CFSR instrument, Item 10, APPLA
PROTECTIVE FACTORS Parental Resilience: N/A Social Connections: N/A Knowledge of Parenting and Child Development: http://www.dss.mo.gov/cd/info/cwmanual/philbase.pdf Concrete Support in Times of Need: http://www.dss.mo.gov/cd/info/cwmanual/philbase.pdf Social and Emotional Competence of Children: http://www.dss.mo.gov/cd/info/cwmanual/philbase.pdf
FACES REQUIREMENTS N/A