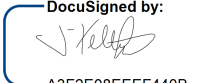


MESA COUNTY DEPARTMENT OF HUMAN SERVICES

Policy and Procedure

POLICY/PROGRAM AREA: Child Welfare Division Adult Protective Services	POLICY NUMBER: AP-2021-01 EFFECTIVE DATE: 4/02/2021 REVISION DATE:
TITLE: Guardianship Policy	AUTHORIZING SIGNATURE(S): <div style="text-align: center;">  </div>

Purpose: To provide guidance and compliance with Adult Protective Services Rules and Statutes in the provision of guardianship to at-risk adults who lack the capacity or natural support to obtain services necessary for health, safety, and welfare.

Policy Statement: When the Mesa County Department of Human Services, Adult Protective Services (MCDHS-APS), determines an at-risk adult is need of a court appointed guardian and there is no other guardian designee alternative, MCDHS-APS shall petition for guardianship of the at-risk adult to ensure the safety and stability of the client.

Federal Law/Regulation References: N/A

State Law/Regulation References:

C.R.S. 26-3.1-101 and 104, Provision of Protective Services:

<https://www.sos.state.co.us/CCR/GenerateRulePdf.do?ruleVersionId=5877&fileName=12%20CCR%202518-1>

C.R.S. 15-14-102 (5), Incapacitated Person:

<https://leg.colorado.gov/sites/default/files/images/olls/crs2017-title-15.pdf>

C.R.S. 26-3.1-101 (1.5), At Risk Adult:

<https://www.sos.state.co.us/CCR/GenerateRulePdf.do?ruleVersionId=5877&fileName=12%20CCR%202518-1>

State Required Policy: N/A

Attachments:

Pre-Guardianship Task List
 Guardianship Panel

Policy Terminology:

At-risk Adult: An individual eighteen years of age or older who is susceptible to mistreatment or self-neglect because the individual is unable to perform or obtain services necessary for the individual's health, safety and welfare or lacks sufficient understanding or capacity to make or communicate responsible decisions concerning the individual's person or affairs.

Procedure:

In accordance with C.R.S. 26-3.1-101 and 104, the Mesa County Department of Human Services (MCDHS) is authorized to offer protective services in order to prevent mistreatment or self-neglect of at-risk adults. Such services include, but are not limited to: receiving and investigating reports of mistreatment or self-neglect, the provision of casework and counseling services, arranging and coordinating, delivering where appropriate, and monitoring services, including medical care for physical or mental health needs, protection from mistreatment and self-neglect, and assistance with application for public benefits, referral to community service providers, and initiation of probate proceedings.

Intervention by MCDHS predominantly takes place with the at-risk adult's cooperation and consent. On rare occasions MCDHS provides guardianship services. In those situations involving the mistreatment of an at-risk adult who cannot consent to protective service intervention, MCDHS may petition the court, pursuant to Title 15 (Probate Code), for an order authorizing guardianship. Additionally, approval by the court to provide guardianship services shall not be sought unless MCDHS has substantial cause to believe that the individual in question is an incapacitated person per Probate Code C.R.S. 15-14-102 (5).

According to 26-3.1-104 (2) if the county director or designee determines that an at-risk adult is being or has been mistreated or self-neglected, or is at risk there-of, and if the at-risk adult does not consent to the receipt of protective services, the county director is urged, if no other appropriate person is able or willing, to petition the court pursuant to part 3 of article 14 of title 15, C.R.S., for an order authorizing the provision of specific protective services for the appointment of a guardian. The steps to obtaining a county held guardianship shall be as follows:

1. MCDHS, specifically Adult Protective Services (APS), after consultation with and agreement by the County Attorney, may petition the court for guardianship of an at-risk adult only when all of the following circumstances exist:
 - a. The reported mistreatment and/or self-neglect has been substantiated and determined to present significant harm to the adult's health, safety, or welfare without intervention; and,
 - b. Other less restrictive intervention options have been fully assessed and found to be inadequate to protect the adult; and,

- c. Medical and/or psychiatric evidence exists to show that the client does not have capacity to make decisions; or the adult is suspected to lack capacity to make decisions and medical or psychiatric evidence cannot be obtained without court intervention.
 - d. The incapacitated person is eligible for Medicaid.
2. APS will not petition the Court for guardianship in the following situations:
 - a. There is no reasonable cause or evidence to believe the person is incapacitated.
 - b. There is no available service or placement that will protect both the individual and the at-risk population at-large.
 - c. The individual is gravely ill and is refusing medical care and expressing a wish to die (and there are no other health or safety concerns)
 - d. Physician/hospital requests intervention for medical consent only and there is no other protective concern.
 - e. The only concern is mental health. Guardianship does not allow for placement and medication of the mentally ill if it is against the wishes of the individual.
3. MCDHS and the community/providers have exhausted all other possible options such as family, friends, collateral agencies and community resources and have determined that no other available or appropriate party exists to petition the court on behalf of the incapacitated person.
4. The incapacitated individual shall meet the medical criteria required for an out of home placement that provides 24-hour supervision and local placement is secured. Such a setting could be a skilled nursing facility (SNF) that may also provide a "lock down" (secured) capacity that prevents the individual from leaving the facility. MCDHS may also consider, on a case by case basis, placement of the incapacitated individual in an assisted living facility such as alternative care facility (ACF), or host/group home. Placement must be approved by a SNF or ACF prior to request of Guardianship.
5. The incapacitated person shall be eligible for Medicaid. Authority to see and/or maintain the individual's Medicaid eligibility shall be requested via guardianship proceedings rather than a conservatorship petition.
6. MCDHS will make every effort to include the client in their own care planning and decision making process. Consideration will always be given to any wishes the client is able to articulate regarding medical decisions. Family member(s) will also be given consideration in planning and decision making processes whenever appropriate.

7. MCDHS and the County Attorney shall have reviewed the case and be in agreement with the plan prior to filing the petition.
8. The APS caseworker shall follow steps to initiate the probate process using the Mesa County Pre Guardianship task list. (See addendum.)
9. APS caseworker shall work to obtain a physician's statement and/or evaluation of capacity which is dated less than 30 days from the date the information is reviewed by the County Attorney and in which it clearly states the decision-making and judgment of the person are impaired and provides recommendations regarding level of care and supervision requirements necessary to protect the client.
10. Upon receipt of the physician's statement and/or evaluation of capacity recommending guardianship, the APS caseworker shall convene an Adult Protection Panel.
 - a. If the caseworker determines the guardianship is emergent, the panel shall convene within two business days.
 - b. Panels shall be presented to a group of at least two APS Social Caseworkers, APS supervisor or lead worker, and the APS Program Manager.
 - c. APS Caseworker shall provide a completed Guardianship Panel Form to all panel members prior to the start of the panel. (See addendum.)
 - d. All APS panel members shall be documented as participants on the panel document and the completed document shall be uploaded to CAPS.
11. The county department shall initiate proceedings to withdraw or transfer guardianship when:
 - a. Medical or psychiatric evidence indicates a guardian is no longer necessary;
 - b. Another appropriate guardian has been identified; or,
 - c. The county department is no longer able to fulfill the guardianship responsibilities as appointed.

Contact Person (for Division Specific Policy):

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Steps in Determining Guardianship

1. Determine if all appropriate least restrictive alternatives have been exhausted.
2. Determine if the Client is potentially appropriate for Guardianship.
 - A. Is there evidence the Client is incapacitated?
 - B. Is there available placement for the Client?
 - C. Does the Client meet medical criteria for out of home placement?
 - D. Is the Client Medicaid eligible?
3. Determine Competency via a Physician's Statement or letter/documentation from client's physician indicating the client's need for Guardianship. (Client's inability to make decisions relating to their care and safety.)
(If there is no physician to determine capacity APS may be able to use client service funds for a psychologist home assessment or an in-office neuro-psych evaluation for capacity determination)
4. Research appropriate family members or friends for potential Guardianship. Determine if family or existing legal authority is willing and able to step in and navigate guardianship. If yes, provide assistance and education regarding the Guardianship process.*(APS Manager has access to Accurint background checks and/or next of kin if needed.)*
5. If the determination of family receiving Guardianship is favorable, the family member can move forward with the placement if indicated and/or oversight of necessary services to maintain the safety of the client. APS will provide the self-help documents to the potential Guardian and provide a list of potential attorney's. *(There may be some assistance available through Colorado Legal Services in some cases.)*
6. If a potential Guardian clearly does not have the financial means and/or the cognitive ability to follow through on the Guardianship court process, confer with APS Manager, regarding Mesa County APS paying for an attorney to complete the Guardianship. In most circumstances this attorney will be the Public Administrator as they are contracted with Mesa County APS.
7. If no appropriate family or friends can be located, a Mesa County Guardianship Panel shall be convened. If the outcome is favorable for APS petitioning for guardianship, notify the County Attorney of APS intent to file for Emergency or Permanent Guardianship.

8. Provide the Physician's Statement to the County Attorney as well as a letter of support from APS addressed to the court and contact information for any interested party at the time of the petition.
9. Determine if an additional filing for a Conservator will be required or if a Rep Payee will be sufficient. If there is a need for a conservator, notify the Public Administrator. If a conservator is not needed, identify an appropriate rep payee.
10. A Petition for Appointment of Guardian will be filed with the court. If the client is in immediate danger and requires immediate placement an Emergency Guardianship can be filed with the court. **In the case of an emergency the judge will make a decision based on the information provided once the courts receive the petition – generally within a couple of days of the filing. If the emergency Guardianship is granted there will be a court date set for the permanency hearing and that process will continue.**
11. Once the request for permanent Guardianship is filed with the court, a Court Appointed Visitor will contact the client and generally will speak with the APS Caseworker as well. (The Court Appointed Visitor will be working under a subpoena and the APS Caseworker shall share necessary information as needed.) A copy of the Visitors Report will be sent to the attorney(s) involved. Often a copy of the Visitors Report will be sent to the APS Caseworker as well or the Caseworker can request a copy.
12. If emergency Guardianship is granted, a court hearing will be set within 60 days to determine permanent Guardianship. If emergency Guardianship is NOT requested a hearing is set as time and court docket allows. All interested parties will be notified. The attorney may subpoena APS to testify, the Physician and/or any other individuals involved. The Court Appointed Visitor will attend the hearing as well as the client if they are physically able.
13. If the petition for guardianship is accepted and the APS Caseworker is appointed as Guardian designee, the county attorney will provide oversight of the immediate and ongoing court documents. The DHS-APS Guardian designee will also be responsible for finding placement for the client and ongoing oversight/supervision.
14. An initial Guardianship Report will be due to the court within 60 days.
15. An annual Guardianship Report will be due each year based on the date of acceptance of the guardianship petition. Contact the County Attorney's Office at least two weeks prior to the due date to obtain a blank guardianship report. After completing the report, place the document in Google Drive for review by APS Manager prior to submitting to the County Attorney's Office.

Adult Protective Services Guardianship Panel

The Guardianship Panel shall be one of the first steps to help a Caseworker determine if obtaining guardianship is the least restrictive option for keeping a client safe. Guardianship Panel shall include two Caseworkers and either Lead Worker or Supervisor. Presenting caseworkers will explain rationale for pursuing guardianship while panel members will offer, if possible, alternative solutions to legal authority. If no solutions exist, Guardianship Panel will recommend pursuit of guardianship by signing this form.

Date:

Caseworker:

Panel Members:

Client:

Guardianship is not solely for medical decision making, circle one:

YES

NO

Why no other services will meet the need:

Search for other interested parties has been completed, circle one:

YES

NO

How guardianship will resolve the safety needs:

Why court intervention is warranted:

Guardianship recommended, circle one:

YES

NO

If no, alternative plan of action recommended:

Caseworker Signature/Date:

Panel Members Signature/Date:

Supervisor Signature/Date:

Manager Signature/Date:
