

Stavros Center for Independent Living, Inc.

INFORMATION ABOUT LEGAL GUARDIANSHIP

Here is some important information that PCA Consumers and their legal guardians need to know about how legal guardianship can affect a Consumer's roles and responsibilities in the PCA Program:

- If the Consumer is an adult (18 years or over), the Consumer or the guardian must provide Stavros with a copy of the court ordered guardianship papers. This information is needed to document what type of guardianship the court has ordered, and what decision making authorities the court has granted the guardian. The Consumer's level of participation in the PCA program can, in part, depend on the type of guardianship the court has ordered.
- If the Consumer is a child (under 18 years of age) the biological parents or adoptive parent) are the child's guardians and are responsible for the oversight and management of the Consumer's PCA services.
- If a child's parents are divorced and have been granted custody of the child, the parent must provide Stavros with a copy of the custody order issued by the court.
- If a court has awarded guardianship to someone other than a child's biological parents, the guardian must provide Stavros with a copy of the guardianship papers.
- The court will order a *full guardianship* or a *limited guardianship*. A *full (plenary) guardianship* order assigns all of a person's personal decision-making responsibility and authority to the guardian. In a *limited guardianship*, the person retains all his/her rights that are not specifically described in the court's order.
- MassHealth requires Consumers who have guardians to have a Surrogate to help them manage some or all of their PCA services.
- The Surrogate may be the guardian or the guardian can appoint someone else to be Surrogate.
- Consumers or guardians must provide Stavros with contact information for both the Surrogate and the guardian(s).
- For Consumers who have guardians, unless otherwise specified in the **Service Agreement**, the guardian is responsible for the oversight and management of the PCA program, including signing required PCA paperwork, such as PCA Evaluations, FI Consumer Agreement, the Service Agreement, the Consumer Assessment, and Activity Forms (timesheets). The Consumer must sign the tax forms as requested by the Fiscal Intermediary.
- If a guardian decides to appoint a Surrogate, the guardian is responsible for ensuring that the Surrogate completes his/her PCA management tasks in accordance with the Service Agreement.
- The **PCA Service Agreement**, a MassHealth standard form, must be completed by the Skills Trainer in conjunction with the Consumer, guardian, and Surrogate, and describes the roles and responsibilities of the guardian, Surrogate, Consumer, PCA, PCM Agency, and Fiscal Intermediary.
- Failure to provide Stavros with requested information as described above will result in delay of submission of Consumer's PCA initial application or re-evaluation to MassHealth.
- Consumers under legal guardianship retain certain rights, regardless of the type of guardianship the court has approved. (See page 2).
- The list of resources described on page 3 provide information and answers to other questions Consumers, guardians, or caregivers may have regarding guardianship or conservatorship.

RIGHTS OF PERSONS UNDER GUARDIANSHIP*

Even though a person under guardianship may lose many rights in the guardianship process, he/she retains many other rights. It is the guardian's responsibility to ensure that these rights are not violated.

Persons under guardianship always retain the right to:

- be protected against abuse and neglect
- be treated with dignity and respect
- a safe, sanitary and humane living, working, and learning environment, which is the least restricted environment for the person
- privacy, including the right to bodily privacy and the right to private and uncensored communication with others by mail, phone, or personal visits
- religious expression in the manner of his/her choice
- interpersonal relationships and sexual expression
- exercise control over all aspects of life that the court has not delegated to the guardian
- appropriate services suited to the incapacitated person's needs and conditions, including mental health services
- have the guardian consider the incapacitated person's personal desires, preferences, and opinions, particularly in regards to ethic, religious, and cultural values
- exercise the option to pro-create
- equal treatment under the law, regardless of race, religion, creed, sex, age, marital status, sexual orientation, or political affiliations
- have explanations for any medical procedures or treatment, including information about the benefits, risks, and side effects of the treatment, and any alternative procedures or medications available
- have personal information kept confidential, including withholding certain information the incapacitated person may not want his/her family to know
- notice of all proceedings related to guardianship
- review personal records, including medical and treatment records
- speak privately with an attorney, ombudsman, or other advocate
- have the guardian available to meet the needs of the incapacitated person at all times
- not be involved in research projects
- continuous review of the need for full or partial restoration of rights
- bring a grievance against the guardian or request the court to review the guardian's actions
- petition the court to modify or terminate the guardianship including the right to meet privately with an attorney or other advocate to assist with this legal procedure
- request removal and replacement of the guardian, or request the court restore rights if the incapacitated person has regained all or some capacity

* See **Handbook for Massachusetts Guardians** for a complete list of the rights of a person under guardianship.

GUARDIANSHIP AND OTHER RESOURCES

The following resources can provide additional information regarding guardianship, conservatorship, and other life planning options:

Department of Developmental Services (DDS) (Area Offices)

<http://www.mass.gov/eohhs/gov/departments/dds/>

If a person is seeking guardianship of a DDS eligible Consumer, the person can contact his/her DDS Area Office to request assistance with filing guardianship. The DDS Service Coordinator can arrange for a Clinical Team Report (CTR) to be done, which is a requirement of the Court. A list of Area Offices and Regional Offices and services provided by DDS is available in the above link.

If a child or adult is not currently eligible for DDS, but would like to apply, the person or the caregiver can contact the local DDS Regional Office, or download and print the DDS Application by visiting the link below. The application should then be mailed to the appropriate Regional Office.

<http://www.mass.gov/eohhs/consumer/disability-services/services-by-type/intellectual-disability>

Handbook for Massachusetts Conservators

<http://www.mass.gov/courts/case-legal-res/law-lib/laws-by-subj/about/guardian.html>

Provides an overview of a conservator's responsibilities and resources available.

Handbook for Massachusetts Guardians

<http://www.mass.gov/courts/case-legal-res/law-lib/laws-by-subj/about/guardian.html>

Provides an overview of a guardian's responsibilities and resources available.

Massachusetts Guardianship Association (MGA)

<http://www.massguardianshipassociation.org/>

A non-profit organization offering information and resources to individuals, families, and professionals on Guardianship, Conservatorship, Health Care Proxy, Durable Power of Attorney, and other life planning options in Massachusetts.

Massachusetts Court System

<http://www.mass.gov/courts/case-legal-res/law-lib/laws-by-subj/about/guardian.html>

The Commonwealth of Massachusetts website pertaining to laws, publications, forms, and resources related guardianship and conservatorship in Massachusetts.

Massachusetts Uniform Probate Code (MUCP) Chapter 521 of the Acts of 2008 G.L. 190 B Article V

<http://www.mass.gov/courts/docs/courts-and-judges/courts/probate-and-family-court/articles-1-5-glc-190b.pdf>

The Commonwealth of Massachusetts law governing guardianships and conservatorships in Massachusetts.

MOLST

<http://molst-ma.org>

Website for the Massachusetts Medical Orders for Life Sustaining Treatment. Provides information and resources for individuals, families, and professionals regarding the MOLST process.

Social Security Representative Payee

<https://www.ssa.gov/payee/index.htm>

Provides information and publications related to Social Security's Representative Payee program for persons who receive Social Security or SSI benefits but are not able to manage their benefits.