

POWER-OF-ATTORNEY VERSUS GUARDIANSHIP

Power-of-Attorney (POA)

1. A legal document in Michigan and some other states.
2. Does not expire.
3. No declaration of incapacity
4. Does not remove civil rights
5. Less restrictive alternative.
6. No court involvement
7. Person and family circle decides.
8. Can be terminated quickly.
9. Cost is negligible if done by person, circle/family and/or other advocate or advocacy agency. It can cost up to \$200.00 or more if an attorney is used.
10. No fees to Attorney(s)-in Fact (person who enters into the POA to assist the person to make decisions).
11. If unable to reach Attorney-in-Fact, can call alternates until someone is reached to provide consents.

Guardianship

- A legal document only within the issuing state. If the person moves to another state, guardianship must be applied for in that state.
- Partial guardianships renewed every 5 yrs.
Plenary guardianships are forever.
- Public declaration of incapacity
- Removes civil rights in areas included.
- Most restrictive form of supports.
- Court oversight.
- Judge decides.
- Takes 4 – 6 months to petition to terminate.
Decision is up to the judge.
- Cost is \$1200.00 - \$2000.00 to issue, renew, modify or terminate (taxes paid by the public fund this service). These funds could be used to fund dental services or for services for new enrollees.
- Public guardians \$30.00 - \$400.00/month.
Family or friends don't receive fees. They may be reimbursed for some costs under extenuating circumstances, i.e., poverty.
- Only Primary guardian has legal authority
Standby guardians can't make decisions unless the primary guardian is deceased, incapacitated or authorizes (in writing) standby to act on the guardian's behalf while guardian is temporarily unavailable. Must be processed through Mental Health Division or Probate Court to remove guardian and issue new order with standby moved to primary.

12. Can be modified immediately by either party.	Takes 2 (if done recently) – 6 months to modify.
13. Is not recognized by Social Security Office, but Social Security recognizes Rep guardianship is not required (Federal agency, not state - only involves financial entitlement program).	Is recognized by Social Security office because guardianship is recognized by all 50 states. Payees so POAs were not available when Social Security Administration was created so this alternative was not included in the administrative code.
14. Can be terminated by either party at any time.	Court can terminate if it deems necessary.
15. Person and his/her family/circle determine successor(s) or develop and implement new POA.	Court determines successor and has the authority to determine the successor guardian.
16. No reports to file with court.	Annual reports must be filed or guardian will be removed within 90 days (even if the required form is not received from the court).
17. Face-to-face contacts desired and encouraged. Some flexibility for long-distances or health issues	Quarterly visits required or guardian can be removed by court (at this time only EPIC and does not currently apply to people with developmental disabilities - however, many judges are applying this standard already)
18. May need to do another Power-of-Attorney at financial or medical providers using the provider's own forms.	Accepted by medical and financial providers.
19. Fosters personal independence.	Fosters dependency
20 Follows Person-Centered-Planning (PCP) principles as specified under the Revised Michigan Mental Health Code (statutory laws) and the principles of self-determination	Does not follow PCP principles or comply with the law unless guardianship is the least restrictive support for decision-making.
21 Prepares person for more independence and responsibility in the future (when supports from family/circle may be gone)	Does not prepare person for the future.
22. Can be completed by individuals deemed to be of "sound" mind – does not require a person to be "legally competent" – only that he/she wishes to have another person help them make decisions	Requires a person be legally designated as "incompetent" (unable to indicate his/her decisions and/or unable to manage his/her estate). Does not take into consideration the supports individuals receive in these areas.