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Title: Guardianship Guidelines
Introduced by: Brent Oldham for the Medical Student Section
Original Author: David Lee
Referred to: Reference Committee E
House Action: **APPROVED**

Whereas, guardianship is defined as a legal relationship created when a state court grants a person or entity the authority to make decisions on behalf of an incapacitated individual concerning his or her person or property^{1,2}, and

Whereas, incapacity is defined as the inability “to meet essential requirement for physical health, safety, and self-care even with appropriate technological assistance” (functional incapacity) or the inability to “receive and evaluate information or make or communicate decisions” (cognitive incapacity)^{3,4}, and

Whereas, a guardian is expected to direct an individual’s assets and benefits towards “food, clothing, housing, medical care, personal items, and other immediate and reasonably foreseeable needs,”² and

Whereas, approximately 1.5 million adults in the United States are under the care of guardians^{5,6,7}, and

Whereas, the United States Census Bureau estimated within the United States there were over 46 million individuals aged 65 and older (2014) and that figure would double by year 2050¹, and

Whereas, given the anticipated growth of the geriatric population and the prevalence of neurodegenerative diseases, more comprehensive guardianship programs and standard state-level guidelines are warranted to ensure continued delivery of quality care^{8,9}, and

Whereas, guardianship programs are overseen by individual states’ laws, regulations, and court systems as there is currently no nationwide system of guardianship in place^{1,2,10,11,12,13}, and

Whereas, in September 2016, only 12 states required certification of professional guardians who may come from family, friends, corporate professionals, or government officials, and in many states, guardians are not required to receive any formal training^{6,14,15,16}, and

Whereas, in 2011, the Government Accountability Office (GAO) determined there was widespread failure of guardians to faithfully execute their court-ordered duties including through neglect, abuse, and financial exploitation, inadequate screening and training guardians, and insufficient oversight of guardians after appointment^{2,17}, and

Whereas, oversight and evaluation of guardians is often minimal, and courts and public systems often are so underfunded and understaffed that they experience great difficulty enforcing what little regulations and protections may be in place^{1,5,7,18}, and

Whereas, improper granting of guardianship deprives individuals of civil liberties including their right to self-determination, excludes them from the normal decision-making process, and contributes to further isolation and erosion of actual and self-perceived abilities^{2,19,20}, and

54 Whereas, poor collection and management of guardianship data across state governments and
55 court systems together with a lack of guardian registries in many states have rendered it difficult to
56 comprehensively understand the issue, and legislate appropriate responses to abuse by guardians^{10,13}, and
57

58 Whereas, inconsistent implementation of standards for evaluating indications for guardianship in
59 the health care setting contributes to delays in process initiation, decreased prompt access to follow-up
60 services, and increased number of medically unnecessary admission days and total expenses¹³, and
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62 Whereas, current MSMS policy does not adequately address disparities in guardianship laws that
63 have enabled numerous cases of abuse and left vulnerable those they are meant to protect^{21,22}; therefore be
64 it

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66 RESOLVED: That MSMS collaborate with relevant stakeholders to advocate for federal creation
67 and/or adoption of national standards for guardianship programs, appropriate program funding measures,
68 and quality control measures; and be it further
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70 RESOLVED: That MSMS collaborate with relevant stakeholders to encourage proactive review of and
71 improvements to state guardianship program minimum standards, funding, and quality control measures;
72 and be it further
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74 RESOLVED: That MSMS re-affirm MSMS Resolution 39-16 as policy to read as follows:
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76 Public Guardians for Incapacitated Patients

77 That MSMS supports and will advocate for the restoration of funding by the State of Michigan for
78 public guardians to serve in this valuable capacity in order to improve the health and treatment for
79 vulnerable patients in times of incapacitation.
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82 WAYS AND MEANS COMMITTEE FISCAL NOTE: \$5000 or more due to direction to collaborate with
83 stakeholders to advocate for standards and control measures.

Relevant MSMS Policy: None

Relevant AMA Policy:

Elder Mistreatment D-515.985

Our AMA: 1. Encourages all physicians caring for the elderly to become more proactive in recognizing and treating vulnerable elders who may be victims of mistreatment through prevention and early identification of risk factors in all care settings. Encourage physicians to participate in medical case management and APS teams and assume greater roles as medical advisors to APS services. 2. Promotes collaboration with the Liaison Committee on Medical Education and the Association of American Medical Colleges, as well as the Commission on Osteopathic College Accreditation and American Association of Colleges of Osteopathic Medicine, in establishing training in elder mistreatment for all medical students; such training could be accomplished by local arrangements with the state APS teams to provide student rotations on their teams. Physician responsibility in cases of elder mistreatment could be part of the educational curriculum on professionalism and incorporated into questions on the US Medical Licensing Examination and Comprehensive Osteopathic Medical Licensing Examination. 3. Encourages the development of curricula at the residency level and collaboration with residency review committees, the Accreditation Council for Graduate Medical Education, specialty boards, and Maintenance of Certification programs on the recognition of elder mistreatment and appropriate referrals and treatment. 4. Encourages substantially more research in the area of elder mistreatment. 5. Encourages the US Department of Health and Human Services, Office of Human Research Protections, which provides oversight for institutional review boards, and the Association for the Accreditation of Human Research Protection Programs to collaborate on establishing guidelines and protocols to address the issue of vulnerable subjects and research subject surrogates, so that research in the area of elder mistreatment can proceed. 6. Encourages a national effort to reach consensus on elder mistreatment definitions and rigorous objective measurements so that interventions and outcomes of treatment can be evaluated. 7. Encourages adoption of legislation, such as the Elder Justice Act, that

promotes clinical, research, and educational programs in the prevention, detection, treatment, and intervention of elder abuse, neglect, and exploitation.

Elder Mistreatment H-515.961

Our AMA recognizes: (1) elder mistreatment as a serious and pervasive public health problem that requires an organized effort from physicians and all medical professionals to improve the timely recognition and provision of clinical care in vulnerable elders who experience mistreatment; and (2) the importance of an interdisciplinary and collaborative approach to this issue, and encourage states to bring together teams with representatives from medicine, nursing, social work, adult protective services (APS), criminal and civil law, and law enforcement to develop appropriate interventions and evaluate their effectiveness.

¹ Senate US, Larin KA. GAO-17-33: Elder Abuse - The Extent of Abuse by Guardians Is Unknown , but Some Measures Are Being Taken to Help Protect Older Adults.; 2016.

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⁵ National Council on Disability. Beyond Guardianship: Toward Alternatives That Promote Greater Self-Determination.; 2018.

⁶ Office of Senator Susan Collins. Senate Aging Committee Examines Financial Exploitation by Guardians.

<https://www.collins.senate.gov/newsroom/senate-aging-committee-examines-financial-exploitation-guardians>. Published 2018.

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⁸ Brown K. GAO-13-498: Elder Justice - More Federal Coordination and Public Awareness Needed.; 2013.

⁹ Bandy RJ, Helft PR, Bandy RW, Torke AM. Medical decision-making during the guardianship process for incapacitated, hospitalized adults: A descriptive cohort study. *J Gen Intern Med*. 2010;25(10):1003-1008. doi:10.1007/s11606-010-1351-8.

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¹¹ Gibson L. Giving Courts the Information Necessary to Implement Limited Guardianships: Are We There Yet? *J Gerontol Soc Work*. 2011;54(8):803-818. doi:10.1080/01634372.2011.604668.

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¹⁵ Geller B. Handbook for Guardianship of Adults. 2014. https://www.michigan.gov/documents/lara/4b_AD_resourceGuardians_Handbook_-_2014__word_618991_7.doc.

¹⁶ Michigan Judicial Institute. Introduction to Conservatorship and Guardianship Proceedings. 2018.

<https://mjieducation.mi.gov/documents/probate-qrms/142-intro-conserv-guard/file>.

¹⁷ Kutz G. GAO-10-1046: Guardianships - Cases of Financial Exploitation, Neglect, and Abuse of Seniors.; 2010.

¹⁸ Indiana Adult Guardianship State Task Force. Who's Overseeing the Overseers? A Report on the State of Adult Guardianship in Indiana.; 2012.

¹⁹ Page KS, Hinrichs KLM. Swimming against the Tide: A Case Study on the Removal of Conservatorship and Guardianship. *Clin Gerontol*.

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²⁰ Salzman L. Rethinking Guardianship (Again): Substituted Decision Making As A Violation Of The Integration Mandate Of Title II Of The Americans With Disabilities Act. *Univ Color Law Rev*. 2010;81:157-245.

²¹ Christie A. Regulation and Reduction of Guardianships. *Michigan State Medical Society*; 2005. <https://www.msms.org/hodresolutions/2005/93.pdf>.

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