



Colorado Department of Human Services

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ADVISORY MEMORANDUM

TO: Developmental Disabilities System Stakeholders

FROM: Laurie Jensen, Family Caregiver/CDASS Coordinator
Shari Repinski, Acting Assistant Director

SUBJECT: Dual role requirements regarding payments to Legal Guardians/Conservators

DATE: September 14, 2010

PURPOSE: The purpose of this memorandum is to provide information regarding the dual role requirements when payments are being made for direct care services to legal guardians or conservators.

BACKGROUND: In anticipation of the full implementation of comprehensive services being provided in the family home, as well as payment to family members, the Division for Developmental Disabilities (DDD) has received a number of inquiries regarding paying legal guardians for providing Medicaid Home and Community Based Services (HCBS) waiver services. DDD is offering the following technical assistance for case managers working with legal guardians/conservators interested in receiving payment for providing waiver services. The following information does not constitute legal advice, and the Community Centered Board (CCB) and/or Program Approved Service Agency (PASA) should consult its own attorney or the probate court that issued the legal guardianship or conservatorship to determine the potential implications to a specific situation.

INFORMATION: Colorado Uniform Guardianship and Protective Proceedings Act, §15-14-101, C.R.S. through §15-14-433, C.R.S. governs guardianship of incapacitated adults in the State of Colorado. Specifically, sections 15-14-310 (4) and (5)(a)(II) and (III), specify that, “unless a court makes specific findings for good cause shown, the same professional may not act as an incapacitated person’s or a protected person’s (II) guardian and direct service provider, or (III) conservator and direct service provider.”

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Persons interested in obtaining guardianship, but do not have an order of permanent guardianship:

1. Must file a petition for guardianship through the county probate court system or through the use of an attorney.
2. The petition should contain information about the dual role (e.g., guardian or conservator and direct service provider) the petitioner is requesting. In general, the petition should include information about:
 - a. What is in the best interest of the ward. "Ward" means an individual for whom guardianship or conservatorship has been appointed.
 - b. Whether the dual role will affect the ward's assets.
 - c. What fees will be paid to the guardian or conservator (this may include providing information about the services the guardian or conservator is going to be paid to provide, the amount of payment, as well as the source of the funds).

Persons with a permanent order for guardianship or conservatorship, which does not include specific findings for good cause:

1. Guardians/Conservators are expected to be familiar with and follow the provisions of the Colorado Uniform Guardianship and Protective Proceedings Act, §15-14-101, C.R.S. through §15-14-433, C.R.S., failure to comply with this law may result in court imposed sanctions.
2. The guardian/conservator should file a new petition with the court requesting a finding for good cause allowing the guardian/conservator to enter into the dual role (e.g., guardian or conservator and direct service provider).
3. The petition should contain information about the dual role the petitioner is requesting. In general, the petition should include information about:
 - a. What is in the best interest of the ward.
 - b. Whether the dual role will affect the ward's assets.
 - c. What fees will be paid to the guardian or conservator (this may include providing information about the services the guardian or conservator is going to be paid to provide, the amount of payment, as well as the source of the funds).
4. The guardian or conservator should continue to include information about the dual role when submitting the annual report to the court that is required under section 15-14-317, C.R.S.

If families, guardians or conservators have additional questions or request additional information about compliance with these regulations, please ask them to consult with the appropriate legal professionals.

If you have additional questions regarding this advisory memorandum, please contact Laurie Jensen at 303-866-7460 or Laurie.Jensen@state.co.us.