

## TO BE RESCINDED

5123-15-01            **Protective services system for guardianship, trusteeship, protectorship, or conservatorship.**

- (A) The purpose of this rule shall be to establish policies and procedures for administering protective services and to develop a statewide system of protective services for individuals with mental retardation or developmental disabilities as defined in section 5123.01 of the Revised Code.
- (B) The provisions of this rule shall be applicable to the department and public or private agencies under contract with the department for the provision of protective services by such agencies.
- (C) The following definitions shall apply to this rule:
- (1) "Conservator" means a conservator of the person pursuant to an appointment by a probate court under Chapter 2111. of the Revised Code.
  - (2) "Contract agency" means any public or private agency under contract with the department for the provision of protective services by the agency.
  - (3) "Department" means the Ohio department of mental retardation and developmental disabilities as established by section 121.02 of the Revised Code.
  - (4) "Guardian" means a guardian of the person, limited guardian, interim guardian, or emergency guardian pursuant to appointment by the probate court under Chapter 2111. of the Revised Code and includes an agency under contract with the department for the provision of protective services under sections 5123.55 to 5123.59 of the Revised Code when appointed by the probate court to have the care and management of the person of an incompetent.
  - (5) "Incompetent," as defined in section 2111.01 of the Revised Code, means any person who is so mentally impaired as a result of a mental or physical illness or disability, or mental retardation, or as a result of chronic substance abuse, that the person is incapable of taking proper care of the person's self or the person fails to provide for the person's family or other persons for whom the person is charged by law to provide, or any person confined to a correctional institution within this state.
  - (6) "Interested party" means any individual, agency, or probate court acting on its own motion.

- (7) "Least restrictive alternative" means that option or choice of service which departs the least from normal patterns of life which can be effective in meeting the individual's needs.
- (8) "Parent" means the natural or adoptive parent.
- (9) "Protective service" means performance of the duties of a guardian, trustee, or conservator, or acting as a protector, with respect to an individual with mental retardation or developmental disabilities.
- (10) "Protector" means an agency under contract with the department acting with or without court appointment to provide guidance, service, and encouragement in the development of maximum self-reliance to an individual with mental retardation or developmental disabilities, independent of any determination of incompetency.
- (11) "Technical assistance" means the provision of assistance of a technical nature concerning guardianship, protective services, and estate planning to individuals, their families or interested parties and advocates in lieu of providing protective services.
- (12) "Trustee" means a trustee appointed by and accountable to the probate court, in lieu of a guardian and without a judicial determination of incompetency, with respect to an estate of ten thousand dollars or less.

(D) Provision of protective services by a contract agency

- (1) The department shall develop a statewide system for protective services for individuals with mental retardation or developmental disabilities. The department may enter into a contract with any responsible public or private agency for the provision of protective services and technical assistance by the agency. The contract agency shall:
  - (a) Be a nonprofit corporation organized under the laws of this state and entitled to tax exempt status under section 501 (a) of the "Internal Revenue Code of 1954," 68A Stat. 3, U.S.C. 1, as amended;
  - (b) Not be required to provide or be liable for any expense of custody and/or care of such persons;
  - (c) Not be a provider of services, other than protective services, or control the

provision of services to individuals with mental retardation or developmental disabilities;

- (d) Have and maintain a bond or other insurance in an amount in excess of the value of all trusteeship funds or other funds held by the contract agency for the benefit of its clients;
  - (e) Ensure that protective services are available on a twenty-four-hour basis, as needed;
  - (f) Maintain qualified and competent personnel at an average client-staff ratio of no more than sixty active clients per each direct service staff person;
  - (g) Have policies in place governing various aspects of the provision of protective services including, but not limited to, a grievance process for individuals or any interested party and an appeal process for nominations/referrals which are initially denied;
  - (h) Have a policy and procedure in place to deal with emergencies;
  - (i) Conduct a criminal background check on its employees in accordance with section 5123.281 of the Revised Code;
  - (j) Subject to Ohio law governing guardianship, make decisions by balancing the individual's personal preference with the individual's health and safety needs and in making decisions affecting the individual consider input from the individual, the individual's family, service and support providers, and any others having relevant information regarding the individual.
  - (k) Ensure the provision of orientation and ongoing training programs for its employees which will guide and train new employees in the efficient and effective delivery of protective services and shall, upon request by the department, provide evidence of at least forty hours of relevant training or continuing education over a four-year-period for its employees.
- (2) An agency that provides protective services pursuant to a contract with another agency or a court may charge the other agency or court fees for the services provided.
- (E) Nomination of guardian, trustee, protector, conservator, or trustee and protector of an

individual with mental retardation or developmental disabilities

- (1) An agency under contract with the department for the provision of protective services may be nominated in the following manner:
    - (a) An individual with mental retardation or developmental disabilities who needs or believes he or she needs protective services may make application in writing;
    - (b) Any interested party may make application in writing on behalf of an individual with mental retardation or developmental disabilities;
    - (c) A parent may name the department or a contract agency as guardian or successor guardian in a will; or
    - (d) A parent may name the department or contract agency as guardian, trustee, or protector to assume such duties during the lifetime of the parent.
  - (2) Nominations of the department as guardian, trustee, protector, conservator, or as trustee and protector of an individual shall be considered to be the nomination of an agency providing protective services under contract with the department.
  - (3) The contract agency shall acknowledge receipt of any nomination, application, or referral for protective services within seven working days of receipt.
  - (4) Upon receipt of a nomination, the contract agency shall procure a comprehensive evaluation of the individual if a current evaluation is not already available. A comprehensive evaluation includes, but is not limited to, a psychological evaluation, including an assessment of adaptive behaviors, current within one year; a medical evaluation current within one year; and a social history current within one year.
  - (5) If a parent has nominated the department or a contract agency as guardian or as successor guardian in a will, the contract agency working with the department shall follow specific directions from the probate court in which the will of the parent has been filed for probate.
- (F) Appointment of a guardian, trustee, conservator, or protector

- (1) Upon nomination or receipt of an application or referral for protective services, the contract agency shall assess the need for protective services. As part of the assessment process, the contract agency shall ensure that a comprehensive evaluation is obtained and considered. No guardianship or trusteeship appointment shall be made and no person shall be accepted for service by a protector unless a comprehensive evaluation has been performed. If no comprehensive evaluation is available, the contract agency may petition the appropriate probate court to order that the comprehensive evaluation be performed. The contract agency shall provide notice of the petition for a comprehensive evaluation to the individual to be evaluated, to ensure that the individual has the opportunity to make objections to the performance of the comprehensive evaluation to the probate court. The contract agency may also conduct any necessary investigation as part of the assessment process.
- (2) The contract agency shall consider the comprehensive evaluation and any other information obtained during the assessment process to determine whether the individual named in the nomination, application, or referral needs protective services. The contract agency shall determine the type of protective service that would represent the least restrictive alternative necessary to protect the individual, including, if applicable, the appropriate form of guardianship.
- (3) Based upon the availability of service, if a contract agency determines that the individual named in the nomination, application, or referral needs protective services, the contract agency shall file an application in probate court for appointment as guardian, trustee, or protector within sixty days of receipt of the comprehensive evaluation and the expert evaluation required by the probate court. The application shall include the comprehensive evaluation and any other information required by the probate court. If the contract agency concludes that the most appropriate and least restrictive form of protective service for the individual would be conservatorship, the contract agency shall, with the consent of the individual, assist the individual in filing a petition for conservatorship in the appropriate probate court pursuant to section 2111.021 of the Revised Code.
- (4) In the case of a protector that is not court appointed, the contract agency shall enter into a formal written agreement with the individual named in the nomination, or one acting on the person's behalf, to advocate for an individual with mental retardation or developmental disabilities independent of any determination of incompetency.
- (5) No costs or fees shall be charged by a probate court for the filing of a petition of guardianship, trusteeship, protectorship or conservatorship under sections 5123.55 to 5123.59 of the Revised Code or for any services performed by a

probate court, or by any state agency in the course of petitioning for protective services.

- (6) A contract with an agency for protective services may permit the agency to charge the individual receiving services fees for services provided.

(G) Termination of guardianship, trusteeship, conservatorship, or protectorship

- (1) When the appointment of a contract agency has been made by a probate court, the contract agency shall inform the individual, interested person, or parent who commenced the nomination of the termination procedure. The contract agency shall assure that the notice of termination procedure has been properly provided to those entitled to receive notice.
- (2) When a contract agency has accepted a nomination as protector without a probate court appointment, the individual on whose behalf the nomination has been made shall be informed in writing of the procedure for terminating the protectorship and, if applicable, the interested person or parent shall be informed in writing by the contract agency.
- (3) If a contract agency concludes that protective services are not warranted, the contract agency shall notify the individual, interested party, or parent in writing and shall state the reason for rejection.
- (4) If a contract agency receives a written request from or on behalf of an individual to terminate protective services as a protector, then protective services as a protector shall cease.
- (5) When a contract agency concludes that the comprehensive evaluation indicates that termination of protective services is contrary to the best interest of the individual, an application may be filed on behalf of the individual for appointment of a guardian, trustee, protector, or trustee and protector in the probate court or, if the individual agrees and participates, for appointment of conservator.
- (6) When a probate court has appointed a guardian, trustee, protector, or trustee and protector, the appointing probate court alone can terminate the appointment. Termination will normally be initiated by filing a motion to the probate court to terminate the relevant protective service and may require a hearing in probate court.
  - (a) In the case of trusteeship, termination will require the filing of the final

accounting which must disclose disbursal of all expenditures with receipts for all assets. Failure to account for assets and expenditures, whether partially or finally, can result in the imposition of penalties by the probate court.

- (b) Guardianship may be terminated upon a finding that the necessity for guardianship no longer exists pursuant to section 2111.47 of the Revised Code. Procedures for evaluating the necessity of continuing a guardianship are set forth in section 2111.49 of the Revised Code and may be invoked by filing a guardian's report pursuant to section 2111.49 of the Revised Code which indicates there is no longer a necessity for the guardianship to continue. Termination of guardianship requires the filing of a final guardian's report.
- (c) A conservatorship may be terminated by a written termination notice from the subject of the conservatorship, by a judicial determination that the individual is incompetent, by death, and by an order of the probate court. Termination of conservatorship would require the filing of a final report.
- (d) Termination of a court appointed protectorship would require the filing of a final report and a motion to terminate the protectorship with the probate court.

(H) Annual reviews, reports, access to records, disclosure of information

- (1) When a contract agency has been appointed trustee by the probate court, an inventory must be filed in accordance with section 2109.58 of the Revised Code within ninety days of the date of appointment.
- (2) A contract agency shall make available upon request from the department a written annual review of the physical, mental, and social condition of each individual for whom the contract agency is providing protective services, and shall file a copy of such review with the probate court in every case where a probate court appointment is involved. The contract agency shall file a guardian's report for all of its wards pursuant to section 2111.49 of the Revised Code which will satisfy the requirements for an annual review.
- (3) The contract agency shall file reviews or reports more frequent than annual ones if ordered by the probate court. The contract agency shall file any interim reports or reviews ordered by the probate court.

- (4) Upon nomination or referral for protective services or appointment by a probate court of a contract agency as a guardian, trustee, conservator, protector, or protector and trustee for any individual and upon satisfying the requirements of section 5123.89 of the Revised Code regarding confidentiality of records, the contract agency shall have access to developmental center records pertaining to the individual, may copy the records at the expense of the contract agency, and may retain the copies as is deemed necessary by the contract agency. The contract agency shall comply with reasonable developmental center procedures for the release of records and shall assume legal responsibility for the copies and for all records in its custody and possession. The parties shall establish procedures for the orderly transfer of information and records.
- (5) Any record of the department or contract agency pertaining to an individual with mental retardation or developmental disabilities shall not be a public record under section 149.43 of the Revised Code. Information contained in those records shall not be disclosed publicly in such a manner as to identify individuals, but may be made available to persons approved by the director of the department or the court.
- (6) Employees of the contract agency and its agents shall have full accessibility without prior permission to individuals served and the records of such individuals residing in the developmental centers or other facilities under the managing authority of the department or licensed by the department.
- (I) In any case where the interests of an individual and the interests of the contract agency as a guardian, trustee, conservator or protector are divergent and are part of a suit or legal proceeding, the contract agency shall contact the Ohio legal rights service or request the court to appoint a guardian ad litem to protect the interests of the individual in such matters.
- (J) All persons employed by or compensated for their services in any manner by the department shall abide by all federal and state laws prohibiting discrimination, intimidation, and retaliation.
- (K) The department shall monitor all protective services provided under this rule.
- (L) The department shall periodically audit the financial books and records of the contract agency to ensure that the provision of protective services is in accordance with applicable laws and regulations and in accordance with the contract between the parties.



- (M) A service and support provider may file a complaint in accordance with rule 5123:2-17-01 of the Administrative Code regarding actions taken pursuant to this rule by an agency under contract with the department for the provision of protective services.
- (N) The joint council on mental retardation and developmental disabilities as created by section 101.37 of the Revised Code shall conduct reviews and make recommendations to the director of the department with respect to any disputes between the department and entities that have entered into contracts with the department for the provision of protective services to individuals with mental retardation or developmental disabilities.

Effective:

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Certification

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Date

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