

# The GAL's Role in Complicated Mental Health and Substance Use Cases: A Case Study



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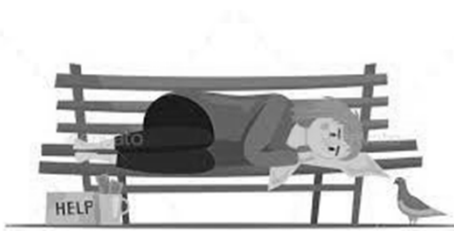
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## The Story of Paula



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## Motion in the Cause

- Any interested person ← Paula's grandmother
- May file a motion in the cause
- Request modification of the order appointing a guardian or consideration of **any matter pertaining to the guardianship**
- Clerk must treat **all such requests**, however labeled, as motions in the cause ← Housing Treatment Safety

G.S. 35A-1207(a), (b)

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## AOC-E-415

STATE OF NORTH CAROLINA  
County

In The General Court Of Justice  
Superior Court Division  
Before The Clerk

IN THE MATTER OF  
Name of Court Reporter (Print)

MOTION IN THE CAUSE  
(GUARDIANSHIP)

County Of Residence (Print)  
Name, Street Address, City, State And Zip (Print Or Write) (S.S. 806.1001, 1007, 1012)  
County Of Residence (Print)  
Name (Print Or Write)

County Of Residence (Print)  
Name (Print Or Write)

The undersigned requests that the Court, after notice of all hearing

modify general guardianship to guardianship of the person  add to the rights and privileges of the ward  
 modify general guardianship to guardianship of the estate  modify the rights and privileges of the ward  
 modify guardianship of the person to general guardianship  Other Comment  
 modify guardianship of the estate to general guardianship

**NOTE:** Form AOC-E-415 is available to be used as a Notice of Hearing form for a hearing on a Motion in The Cause (Guardianship)

Resident of This Nation, the undersigned states:  
 I am the ward.  
Name And Address Of Court Reporter

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## "Napkin Rule"



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## Appointment of GAL

The clerk shall appoint a GAL to represent a ward in a guardianship proceeding if:

- the ward has been adjudicated incompetent and
- the clerk determines that the ward's interests are not adequately represented.

G.S. 35A-1217

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### Motion in the Cause

- Movant obtains time, date, and place for hearing on the motion
- Must serve the motion and notice of hearing on all other parties and anyone the clerk directs
- Service pursuant to Rule 5 of the N.C. Rules of Civil Procedure

G.S. 35A-1207(c)

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### Emergency Motion in the Cause

If **reasonable cause** to believe an emergency exists that threatens physical well-being of the ward or constitutes a risk of substantial injury to ward's estate, the clerk may enter an **ex parte order** addressing the emergency pending disposition of the matter at the hearing.

G.S. 35A-1207(d)

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### Powers and Duties of the GOP

- Entitled to custody of the ward's person
- Required to make provision for the ward's
  - care,
  - comfort, and
  - maintenance
- Required to, as appropriate, make provision for the ward's
  - needs,
  - training,
  - education,
  - employment,
  - rehabilitation, or
  - habilitation.

G.S. 35A-1241(1)

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## Powers and Duties of the GOP

- Establish the ward's place of abode, giving preference to places in NC that are **not treatment facilities**
  - If only available and appropriate places are treatment facilities, the guardian shall give preference to **community-based treatment facilities**
- Give any consent or approval necessary to enable the ward to receive
  - Legal
  - Psychological
  - Other professional care, counsel, treatment, or service
- Give **any other consent or approval** on the ward's behalf in the **ward's best interests**

G.S. 35A-1241(2), (3)

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## The Clerk's Oversight Role (GOP)

- Orders in response to motion in the cause (ex parte orders) (G.S. 35A-1207)
- Status reports (G.S. 35A-1242)
- Status report hearings (G.S. 35A-1242(d))
- Show cause, civil contempt (G.S. 5A-21)
- Remove the guardian (G.S. 35A-1290)
- Remove the guardian in an emergency (G.S. 35A-1291)
- Hold a hearing and make rules and enter orders for the better management of estates and care and maintenance of wards (G.S. 35A-1290)
- Require establishment of guardianship plan and program (G.S. 35A-1111)



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## The Clerk's Oversight Role (GOE)

- Orders in response to motion in the cause (ex parte orders) (G.S. 35A-1207)
- Inventory (G.S. 35A-1261)
- Accountings (G.S. 35A-1264)
- Bond (G.S. 35A-1230, et. al.)
- Show cause, civil contempt (G.S. 5A-21)
- Remove the guardian (G.S. 35A-1290)
- Remove the guardian in an emergency (G.S. 35A-1291)
- Hold a hearing and make rules and enter orders for the better management of estates and care and maintenance of wards (G.S. 35A-1290)
- Require establishment of guardianship plan and program (G.S. 35A-1111)



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## The GAL's Role

Represent the ward in the proceeding:

1. Gather information and assess performance by the GOP
2. Mobilize effective court oversight of the GOP to ensure better performance by the GOP, if necessary
3. Represent the ward at the hearing on the motion in a way that does both

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## Question

This motion seems to be fundamentally about what is the guardian doing (or not doing).

How does the GAL learn about and assess what the guardian is doing?



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## Ask the Guardian:

Does the ward have a mental health treatment provider?



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**Who is the Ward's Treatment Provider?**

If the guardian can answer this question, then the you are part of the way toward determining whether:

- The necessary services are available
- The guardian has arranged for such services
- The ward is engaged in services

If the guardian cannot answer these questions, then there is no guardianship

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**Reasonable Expectations of the GOP**

The guardian of the person should know:

- The ward's needs
- The ward's service provider(s)
  - The provider will have a wealth of information about Paula

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**Reasonable Expectations of the GOP**

If the ward has no provider, then the guardian must learn how to access services. This requires the guardian to know something about

- The ward's payor for services
- The system of services for that payor, and
- How to access services within that system

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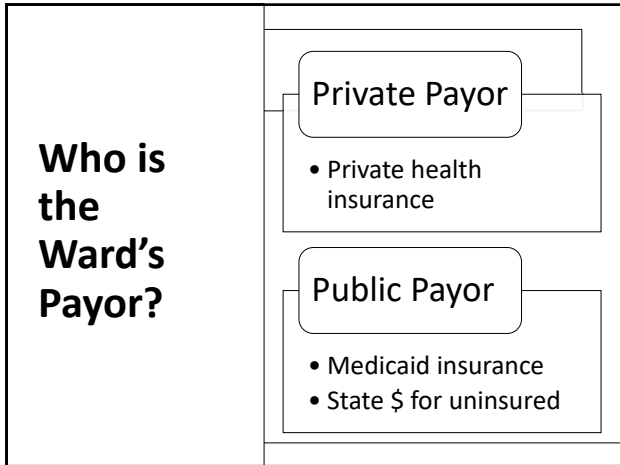
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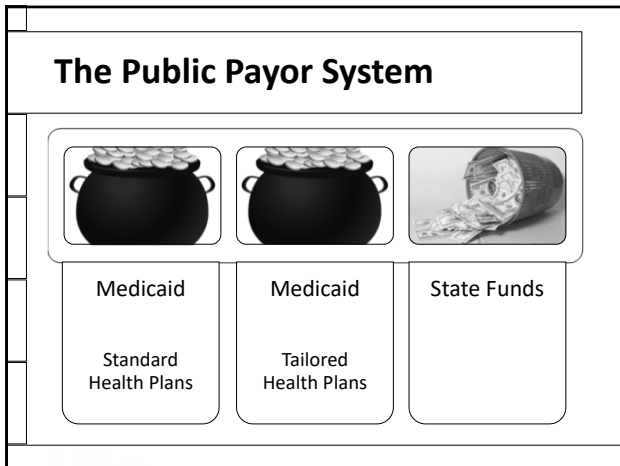
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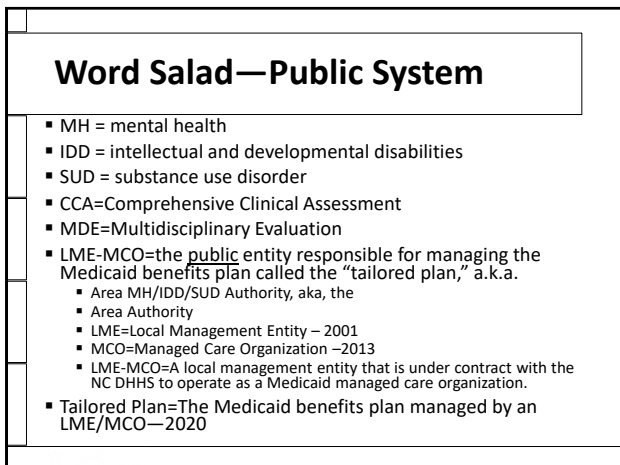
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## Two Kinds of Medicaid Health Plans

- Standard Plan—Administered by private managed care organizations (MCOs) serving those with no or lower intensity behavioral health needs
  - AmeriHealth Caritas
  - Healthy Blue
  - United Healthcare
  - WellCare
  - Carolina Complete Health (a provider led entity)
- Tailored Plans—Managed by public MCOs (the LME-MCOs) serving those with more serious MH/IDD/SUD needs
  - LME-MCOs also manage the non-Medicaid public funds (federal/state/county)

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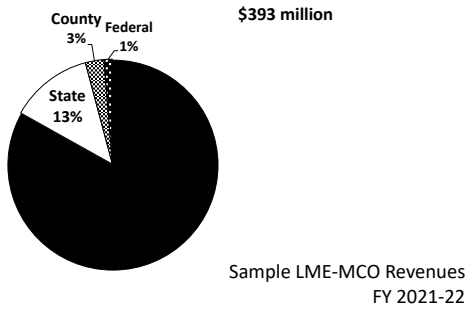
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## Who pays for LME-MCO Services?



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## LME-MCO Catchment Areas—2023

<https://www.ncdhhs.gov/providers/lmemco-directory>

Local Management Entity/Managed Care Organizations (LME/MCOs)  
NCDHHS Currently Has 6 LME/MCOs Operating Under the Medicaid 1915 b/c Waiver



- Tailored Plan contracts awarded to all existing LME/MCOs
- DHHS working with future Tailored Plan to prepare for December 2022 implementation

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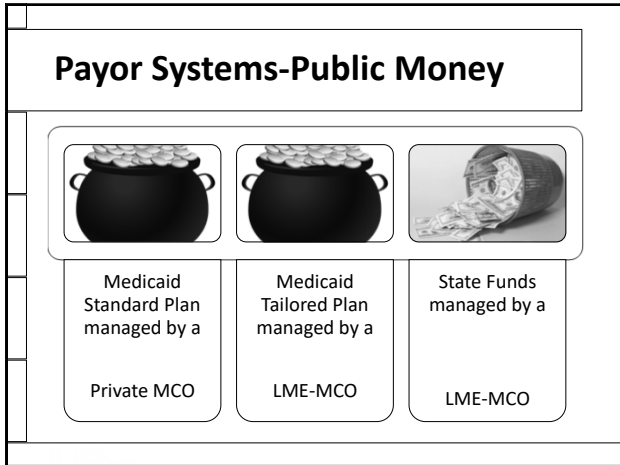
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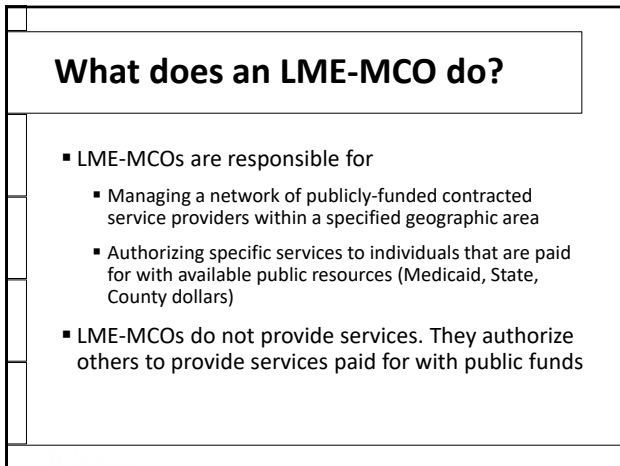
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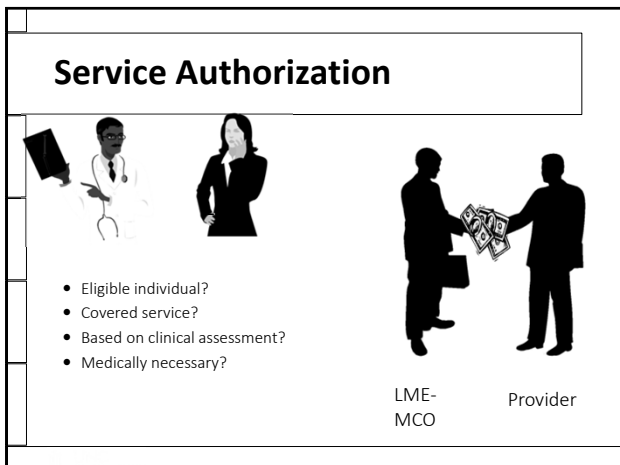
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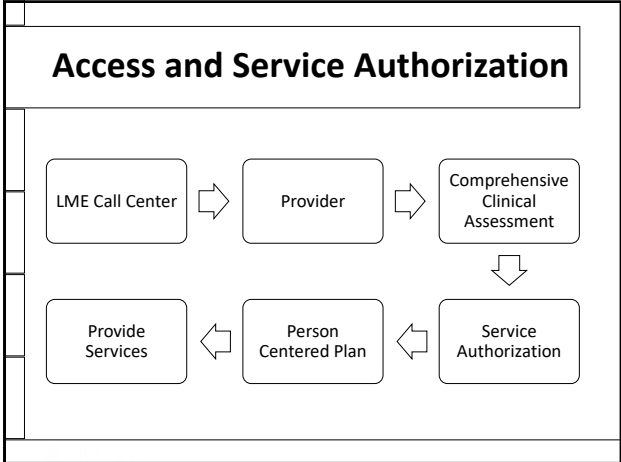
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### Back to Paula



**GAL asks the guardian:**  
Does Paula have a mental health treatment provider?

**Guardian says:** "I don't know," or "they don't have one"

**GAL asks: Why not?**

1. Is Paula Medicaid eligible and no one has applied for Medicaid for her?
2. Does Paula have Medicaid but has not been connected to an LME-MCO and a treatment provider?

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### Back to Paula



**GAL asks the guardian:**  
Does Paula have a mental health treatment provider?

**Guardian says:** "Yes, they have one."

**GAL asks:**

1. Who is it?
2. When is the last time Paula saw the provider?
3. What has the guardian done to build a relationship with the provider?

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### Question

Why does it matter whether the **guardian** knows who the provider is and establishes a relationship with them?



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### Why ask about the Provider?

A relationship with the provider is necessary for the guardian:

- to understand the ward's service needs
- to know how to meet those needs (or why they are not being met), and
- to arrange for and consent to treatment services



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### Informed Consent to Treatment

- Treatment requires consent
  - For the ward to receive treatment for mental health, intellectual/developmental disabilities, or substance use disorder, the guardian must consent to the services. GS 122C-57(d).
- Consent requires information
  - The guardian must be informed of the potential risks and alleged benefits of the treatment choices. GS 122C-57(a).

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**Access to Treatment Information**

Upon request, a guardian shall have access to the ward’s confidential information relating to services for mental illness, intellectual or developmental disabilities, and substance use disorder.

G.S. 122C-3 (9),(15),(20) and -53(d)

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**Comprehensive Clinical Assessment**

A clinical and functional face-to-face evaluation of a person’s MH, IDD, and SUD that provides the basis for a treatment or service plan.

- Identifies strengths and needs
- May include information from collateral sources, including prior treatment providers
- May include information from prior assessments
- Family/social history
- Diagnoses
- Evidence based treatment recommendations




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**CCA versus MDE**

A CCA not only discusses needs and recommends services but also seeks authorization for services:

- Is prepared by a service provider for submission to the LME-MCO.
- Documents “medical necessity”—necessary for Medicaid payment—prior to provision of services.
- Formally asks the LME-MCO if it will pay for (authorize) the recommended service or services

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## Person-Centered Plan (PCP)

- Brings guardian and ward together to plan services
- Designed to give patient a say
- Identifies strengths, interests, needs, objectives, goals and interventions
- Must be signed by the guardian
- Required by State for “enhanced” services, e.g., ACTT, PSR, SAIOP, supported employment
- Some providers do the same for other services (e.g., standard outpatient), though not on State PCP form



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## Can GOP share CCA with the GAL?

**Yes—**

- By consent of the GOP, or
- By court order



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## Back to Paula



### GAL inquiry/assess

1. Is the guardian obtaining and using available information (CCA)?
2. What is the guardian doing to make sure Paula is receiving recommended services?
3. Has the guardian participated in the development of a person-centered plan (PCP)?

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**Question**

What are some of the services that might be recommended in the CCA?



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**Services: AA**

AA = Advanced Access (“walk-in”) clinics:

- For routine, urgent (at high risk of hospitalization if not served within 24-48 hrs) or emergent care (presenting w/ psychosis, suicidal or homicidal ideation, or need for detoxification); also available by appointment
- Can perform a CCA

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**Services: ACTT**

ACTT = Assertive Community Treatment Team

- Group of medical, behavioral, and rehabilitation professionals who are the first line provider of all services. Single point of responsibility, high frequency and intensity of contacts. Particularly for individuals with severe and persistent mental illness who may passively or actively resist services.

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### Services: MCM

MCM = Mobile Crisis Management

- Crisis response dispatched to location of person in need with follow-up case management
- Some can do a CCA



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### Services: PSR

PSR = Psychosocial Rehabilitation

- Often delivered in a club house model—for persons with severe and persistent mental illness, promotes recovery, self-reliance, friendships, community integration, coping skills, primarily through skill building groups

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### Services: Outpatient Clinics

Outpatient Clinics = For MH/SUD adults.

- Preventive and ongoing psychiatric services.
- Individual and group therapy services, assessments

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## Services: SAIOP

SAIOP = Substance Abuse Intensive Outpatient Day Treatment

- A series of structured activities designed to assist individuals with addiction disorders to begin recovery and learn skills for recovery maintenance.
- A minimum of 9 hrs/week over a minimum of 3 days/week.
- Counseling, biochemical testing, life skills, relapse prevention, disease management, case management to link or coordinate other services.

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## Services: Other Options

- BHUC = Behavioral Health Urgent Care—drop off site for IVC, 23-hr observation unit
- FBC = Facility Based Crisis—inpatient unit that can provide psychiatric and detox services—5-7 day avg. stay, discharged to outpatient treatment
- MAT = Medication Assisted Treatment for individuals with SUD—induced in FBC and continued in outpatient

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## Services: Care Management

- Assesses and coordinates all of a patient's needs
  - Physical health, behavioral health, IDD, TBI, employment, housing, etc.
- Multidisciplinary team of professionals that communicate and collaborate
  - Must use technology that bridges data silos across providers and plans
- Drives development of a care plan → \$\$\$
- Some LME-MCO contracted providers are certified to provide Care Management

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## Back to Paula

### GAL inquiry/assess



1. What services are recommended for Paula?
2. What is the guardian doing to connect Paula to these services?

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## Question

Paula had been subject to an IVC twice in recent months. What does this indicate to you?



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## Involuntary Commitment

- A pathway to services of the last resort
- Court ordered treatment-
  - Inpatient treatment for individuals who are mentally ill and dangerous to self or others
  - Outpatient treatment for those capable of surviving safely in the community with the help of family, friends, service providers, or others

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## Involuntary Commitment Docs

- Begins with a clinical evaluation, typically performed at a
  - Hospital emergency department, or
  - LME-contracted facility-based crisis (FBC) center
- Second evaluation at an inpatient facility
- Some respondents are discharged from site of first evaluation and case is terminated before individual gets to inpatient facility and court hearing

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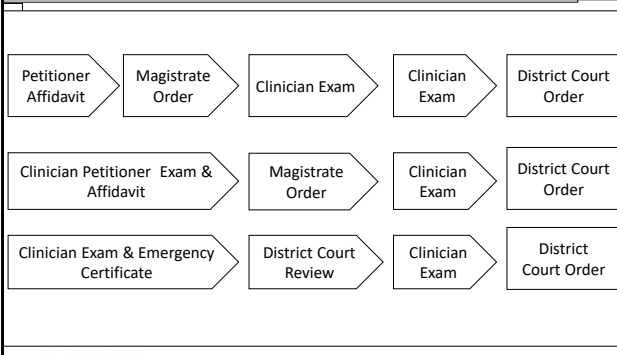
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## IVC Procedure—Three Pathways and Their Examination/Documentation Points



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## Back to Paula



### GAL inquiry/assess

1. Has the guardian accessed Paula's most recent IVC exams?
2. What do those exams recommend for Paula?
3. What has the guardian done to facilitate those recommendations?

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### Question

Is there anything else for GALs to know about Paula's case – specifically things to keep in mind when guardianship cases involve wards with complicated mental health and substance use conditions?



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### Other Things to Know

- Episodic nature of mental illness
- Cooperation and insight may vary over time
- Distinction from elderly with dementia
- Guardian's authority to consent to treatment may be difficult to implement without the ward's cooperation

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### Take-Aways: The Guardian's Role

- An assessment (CCA) is the key for opening the service door. The GOP should
  - Determine which MCO is Paula's payor for services
  - Ask for a provider to perform the assessment.
- In LME-MCO system an assessment
  - Can be done by appointment or walk-in
  - Can be done by mobile crisis in some counties
- Guardian should push for an MH/SUD assessment and follow through with the recommendations

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## Take-Aways: The GAL



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## Take-Aways: The GAL

Duties of GOP coupled with G.S. 35A-1201(a)(2).  
Incompetent persons who are not able to act effectively on their own behalf have a **right to a qualified, responsible guardian.**



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## Take Aways: The GAL

May be only so much GOP and court can do, but the question is whether GOP and court are doing what they can?

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## Take-Aways: Paula's Case

- Consider seeking an order from the court that the guardian must submit a status report with specific information included by a certain date; calendar hearing for consideration of the report
  - Identify any government benefit applications needed
  - Identify provider names
  - Steps to connect Paula to treatment
  - Steps to connect Paula to services recommendations
  - Steps to connect Paula to stable housing and a safe living environment
  - Identify Paula's other needs (clothing)
  - Guardian's short-term goals
  - Guardian's long-term goals

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## Status Reports: G.S. 35A-1242

- (a1) Each status report shall include all of the following:
- (1) A report or summary of recent medical and dental examinations of the ward by one or more physicians and dentists. In instances when the guardian has made diligent but unsuccessful attempts to secure this information, the guardian shall include in the status report an explanation and documentation of all actions taken to attempt to secure this information.
  - (2) A report on the guardian's performance of the duties set forth in this Chapter and in the clerk's order appointing the guardian.
  - (3) A report on the ward's residence, education, employment, and rehabilitation or habilitation.
  - (4) A report of the guardian's efforts to restore competency.
  - (5) A report of the guardian's efforts to seek alternatives to guardianship.
  - (6) If the guardian is a disinterested public agent or corporation, a report of the efforts to identify alternative guardians.
  - (7) The guardian's recommendations for implementing a more limited guardianship, preserving for the ward the opportunity to exercise rights that are within the ward's comprehension and judgment.
  - (8) Any additional reports or information required by the clerk.

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## Take-Aways: Paula's Case

- Request the court order disclosure of the status report to the GAL
- Request the court schedule subsequent review hearings to determine steps guardian taken toward accomplishment of plan

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**Status Reports: G.S. 35A-1242**

(d) The clerk, on the clerk's own motion, or any interested party, may file a motion in the cause pursuant to G.S. 35A-1207 with the clerk in the county where the guardianship is filed to request modification of the order appointing the guardian or guardians or for consideration of any matters contained in the status report. (1987, c. 550, s. 1; 2014-100, s. 12D.4(b).)

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**Resources**

- LME-MCO Directory  
<https://www.ncdhhs.gov/providers/lmemco-directory>
- Standard Plans—Medicaid contacts for beneficiaries of “Standard Plans,” also called “prepaid health plans” (PHP)  
<https://medicaid.ncdhhs.gov/media/8275/download>

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**Questions?**

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