



# Office of Children and Family Services

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## Administrative Directive

<b>Transmittal:</b>	21-OCFS-ADM-03
<b>To:</b>	Commissioners of Social Services
<b>Issuing Division/Office:</b>	Child Welfare and Community Services Bureau of Adult Protective Services
<b>Date:</b>	February 18, 2021
<b>Subject:</b>	<b>Changes in Annual Assessment Requirements for Community Guardianship Programs</b>
<b>Suggested Distribution:</b>	Directors of Social Services Adult Protective Services Supervisors Community Guardianship Program Providers
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<b>Attachments:</b>	None

Previous ADMs/INFs	Releases Cancelled	NYS Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
		18 NYCRR 457.12(d)	Chapter 579 of the Laws of 2019; Social Services Law §473-d; Mental Hygiene Law § 81.31		

### I. Purpose

The purpose of this Administrative Directive (ADM) is to inform local departments of social services (LDSSs) of Chapter 579 of the Laws of 2019, which amends Social Services Law (SSL) § 473-d by eliminating redundant and unnecessary reporting requirements and reduces the number of required annual assessments for clients of a community guardianship program.

## **II. Background**

The community guardianship program provides for the appointment of either an LDSS, or a nonprofit under contract with an LDSS, to act as the legal guardian for an incapacitated adult served by Adult Protective Services (APS) when no other person or entity is available to act as a guardian for such adult. Previously, SSL § 473-d required community guardianship programs to obtain annual assessments from two qualified psychiatrists (or one qualified psychiatrist and one qualified psychologist) independent of the community guardianship program. These psychiatric and/or psychological assessments were then provided to the appointing court to determine whether the person receiving guardianship services continued to need a guardian.

Additionally, since 2004, Mental Hygiene Law (MHL) § 81.31 requires every guardian to file an annual report every May. This annual report must include a statement prepared by a physician, psychologist, nurse, clinician, social worker, or other person evaluating the condition and functional level of the person for whom the community guardianship program serves as guardian. The statement must be prepared within the three-months prior to the filing of the report.

The amendment to SSL § 473-d eliminates the previously required assessments by two mental health professionals each year and now requires a single evaluation annually by a physician, psychologist, nurse, clinician, social worker or other person evaluating the conditioning and functioning of the person for whom the community guardianship program serves regarding whether guardianship continues to be appropriate. The evaluation cannot be conducted by a professional affiliated with a community guardianship program, and the evaluating professional must act within their lawful scope of practice as established under the education law. The amendment to SSL § 473-d aligns requirements with existing reporting requirements in MHL § 81.31.

## **III. Program Implications**

In addition to reducing the number of required annual assessments, the revision provides greater flexibility regarding who may provide an annual evaluation of the person under guardianship. This amendment may reduce costs incurred by the LDSS for contracting out for these duplicative assessments. As with the prior requirements, the appointing court must still be informed of the results of such evaluation or examination, and as a result of the evaluation, the court may modify or discharge the guardian pursuant to MHL § 81.31.

## **IV. Required Action**

LDSSs and community guardianship programs are advised to broaden the scope of professionals leveraged to examine and assess the necessity of continuing a person's guardianship. The changes in these requirements will allow greater flexibility in that endeavor.

**V. Systems Implications**

None.

**VI. Effective Date**

This ADM is effective immediately.

**/s/ Lisa Gharthey Ogundimu**

**Issued by:**

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Title: Deputy Commissioner

Division/Office: Child Welfare and Community Services