



Topics in Public Guardianship

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Department of Human Services

March 2014

History and Background

1917 – Mental Retardation Guardianship Act

Minnesota Statutes 252A.01 to 252A.21

Minnesota Rules 9525.3010 to 9525.3100

General Law by Reference:

Minnesota Statutes 524.5

Legal Terms

Guardian

Conservator

Guardian ad litem

Power of Attorney

Health Care Proxy

Who?

An Adult (18+) with Developmental Disability

The person is in need of the supervision and protection of a guardian.

That no appropriate alternatives to public guardianship exists that would be less restrictive of the person's civil rights and liberties.

Powers

Delegated vs

Non-Delegated

Powers and Duties

A. The power to determine the ward's place of residence consistent with state and federal law, and the least restrictive environment consistent with the ward's best interest.

B. The duty to determine that provision has been made for the ward's care, comfort, maintenance needs, including food, shelter, health care, social and recreational requirements, and whenever appropriate, training, education, and habilitation or rehabilitation.

C. The duty to take reasonable care of the ward's clothing, furniture, vehicles, and other personal effects, and, if other property requires protection, the power to seek appointment of a guardian of the estate.

D. The power to give necessary consent to enable the ward to receive necessary medical or other professional care. Exceptions to consent to medical care under parts 9525.3055 to 9525.3060 apply. This power includes consent to aversive and deprivation procedures under part 9525.3045 and psychotropic medications under part 9525.3050

E. The power to approve or withhold approval of any contract the ward makes, except for necessities.

F. The duty and power to exercise supervisory authority over the ward in a manner that limits civil rights and restricts personal freedom only to the extent necessary to provide needed care and services.

Subp. 2. Additional powers.

The county staff acting as public guardian may have the additional powers granted under Minnesota Statutes, section 252A.111, subdivision 2, if the power is granted by the court. These additional powers are:

A. the power to permit or withhold permission for the ward to marry;

Subp. 3. Special duties. Under Minnesota Statutes, section 252A.111, subdivision 6, the county staff acting as public guardian shall:

A. maintain close contact with the ward, visiting at least twice a year;

B. determine whether written consent should be given before filming of the ward for public dissemination, after permitting and encouraging input by near relatives of the ward. All filming must depict the ward with dignity and must not be contrary to the best interest of the ward. Consent for filming must include a consideration of the purpose and intended use of the film;

C. take actions and make decisions on behalf of the ward that encourage and allow the maximum level of independent functioning in a manner least restrictive of the ward's personal freedom consistent with the need for supervision and protection; and

D. permit and encourage maximum self-reliance on the part of the ward and permit and encourage input by the nearest relative of the ward in planning and decision making on behalf of the ward.

Non-Delegated Powers

Consent for DNR-DNI

Consent to Limit Medical Treatment (Palliative Care/Hospice)

Participation in Research

Non-Delegated Powers*

*Require court order

Consent for Electro-convulsive Therapy (ECT)

Sterilization

Psychosurgery

Annual Report

DHS-5836

<http://edocs.dhs.state.mn.us/lfservlet/Public/DHS-5836-ENG>

- A. physical adjustment and progress;
- B. mental adjustment and progress;
- C. social adjustment and progress; and
- D. legal status based on A to C.

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Minnesota Administrative Rules
CHAPTER 9525, PROGRAMS FOR PERSONS WITH
DEVELOPMENTAL DISABILITIES

CHAPTER 9525.2700 – 9525.2810 – Rule 40

CHAPTER 9525.3010 – 9525.3100 – Rule 75
(Public Guardianship)

Minnesota Administrative Rules

9525.3045 CONSENT TO USE OF AVERSIVE AND DEPRIVATION PROCEDURES.

Subpart 1. Generally. The county staff acting as public guardian has the authority to give informed consent for the use of aversive and deprivation procedures.

Technical assistance from the department about the use of aversive and deprivation procedures is available to the local agency upon request. The county staff acting as public guardian must withdraw consent at any time that the use of aversive and deprivation procedures do not appear to be in the best interest of the ward.

Subp. 2. Informed consent.

The county staff acting as public guardian must not consent to the use of aversive and deprivation procedures unless all requirements in parts [9525.2700](#) to [9525.2810](#), Code of Federal Regulations, title 42, section 483.13, and other requirements existing in state and federal law governing the use of such procedures are met.

Subp. 3. Monitoring data.

The county staff acting as public guardian shall monitor the use of aversive and deprivation procedures by reviewing data required under parts [9525.2700](#) to [9525.2810](#) and Code of Federal Regulations, title 42, section 483.13, to determine whether continued use of aversive or deprivation procedures is consistent with these requirements and is in the best interest of the ward. Documentation of this review must be included in the quarterly review required under part [9525.3065](#), subpart 2.