

CHAPTER 45
GUARDIANSHIP SERVICES

Authority

N.J.S.A. 30:1-12 and 30:4-165.4 et seq., specifically 30:4-165.16.

Source and Effective Date

R.2010 d.281, effective December 6, 2010.
See: 42 N.J.R. 1290(a), 42 N.J.R. 2955(a).

Chapter Expiration Date

Chapter 45, Guardianship Services, expires on December 6, 2015.

Chapter Historical Note

Chapter 45, Guardianship Services, was adopted prior to September 1, 1969.

Chapter 45, Guardianship Services, was readopted as new rules by R.1983 d.391, effective September 19, 1983. See: 15 N.J.R. 1073(a), 15 N.J.R. 1581(a).

Pursuant to Executive Order No. 66(1978), Chapter 45, Guardianship Services, expired on September 19, 1988.

Chapter 45, Guardianship Services, was adopted as new rules by R.1990 d.76, effective February 20, 1990. See: 21 N.J.R. 607(a), 22 N.J.R. 653(b).

Pursuant to Executive Order No. 66(1978), Chapter 45, Guardianship Services, expired on February 20, 1995.

Chapter 45, Guardianship Services, was adopted as new rules by R.1995 d.572, effective November 6, 1995. See: 27 N.J.R. 2668(a), 27 N.J.R. 4310(a).

Pursuant to Executive Order No. 66(1978), Chapter 45, Guardianship Services, expired on November 6, 2000.

Chapter 45, Guardianship Services, was adopted as new rules by R.2001 d.91, effective March 19, 2001. See: 32 N.J.R. 3928(a), 33 N.J.R. 1001(a). Chapter 45, Guardianship Services, expired on March 19, 2006.

Chapter 45, Guardianship Services, was adopted as new rules by R.2010 d.281, effective December 6, 2010. See: Source and Effective Date.

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SUBCHAPTER 1. GENERAL PROVISIONS

10:45-1.1 Authority

(a) The Department of Human Services is directed to provide comprehensive services, specifically including guardianship services, to eligible individuals with a developmental disability, in order that they may be provided with adequate training, care and protection pursuant to N.J.S.A. 30:4-165.1.

(b) The Department of Human Services is directed to perform such services for adults who are incapacitated, for whom no guardian has been appointed, and which would otherwise be rendered by a guardian of the person pursuant to N.J.S.A. 30:4-165.5.

(c) The Commissioner of the Department of Human Services is mandated to make all reasonable and necessary provisions to insure the health, safety, welfare and earliest appropriate release of individuals admitted to residential services for the developmentally disabled pursuant to N.J.S.A. 30:4-25.

(d) The Bureau of Guardianship Services has been assigned the responsibility of providing guardianship services by the Commissioner. Guardianship services are limited to guardianship of the person only and not property pursuant to N.J.S.A. 30:4-165.12.

10:45-1.2 Guiding principles

(a) BGS guardians shall be guided by the following principles when exercising their responsibilities:

1. Guardianship is a legal relationship in which an individual or entity is legally authorized to make decisions on behalf of another individual to the extent determined by a court of competent jurisdiction and specified in a court order issued by that court;
2. The Bureau of Guardianship Services is permitted by law to serve as guardian of the person only. In this role, the Bureau of Guardianship Services is the individual's personal representative, as well as the individual's advocate and legally authorized decision-maker;
3. Decisions made in one area of an individual's life often affect other areas of the individual's life. Therefore,

the BGS guardian should be notified, in advance, of decisions to be made in areas in which the individual retains decision-making authority. The individual should be given the opportunity to consult with the BGS guardian in all areas of his or her life and to request that the BGS guardian provide assistance in advocating for his or her wishes;

4. Surrogate decision-making should be based upon the principle of informed consent, giving due respect to the wishes and preferences of the individual and should be made by balancing the individual's right to self-determination with the individual's need for protection from harm;

5. Reasonable efforts should be made to promote and preserve the individual's human rights, including the right to privacy, dignity, respect and self-determination, pursuant to N.J.S.A. 30:6D-1 et seq., and in accordance with N.J.A.C. 10:41A;

6. Maintaining confidentiality is an essential component of the right to privacy. Therefore, only that information necessary and relevant to the issue being addressed should be disclosed;

7. Reasonable efforts should be made to maximize opportunities for decision-making and the development of individual skills as both are necessary components for enhancing self-direction and independence. The goal, if possible, should be to restore the individual to capacity, either full or limited;

8. It is important to determine the extent to which the individual identifies with particular ethnic, religious and cultural values, and to respect to those values when making decisions on behalf of the individual. Further, opportunities for the expression of those values should be respected and supported;

9. To the extent possible, the individual should receive the highest quality of end-of-life care. Reasonable efforts should be made to protect and nourish the dignity of the individual and to carefully weigh the benefits and burdens of treatment, when considering what is in the best interest of the individual in accordance with N.J.A.C. 10:48B; and

10. Individuals receiving guardianship services have a right to interpersonal relationships and sexual expression, as long as the latter is consensual in nature, the individual is not victimized and an environment suitable to this expression is provided.

10:45-1.3 Definitions

The following words and terms, as used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

"Assistant Commissioner" means the Assistant Commissioner of the Office of Legal, Regulatory and Guardianship Services of the Department of Human Services.

"Best interest standard" means a guardian consents for programs or treatment in the best interest of an individual when the individual's wishes cannot be determined, when following the individual's wishes would cause substantial harm to the individual or when the guardian is unable to establish the individual's prior or current wishes.

"Bureau of Guardianship Services" or "BGS" means the unit within the Department of Human Services that the Commissioner has designated to exercise the Commissioner's responsibility and authority to provide guardian of the person services to individuals in need of such services.

"Capacity" means the ability to employ the appropriate reasoning relative to the demands of the decision to be made. An individual may have capacity for decision-making in some areas of life, but not for the others, or for some decisions within an area of life, but not all.

"Commissioner" means the Commissioner of the Department of Human Services.

"Developmental disability" means a severe, chronic disability as defined in N.J.A.C. 10:46-1.3.

"Disability Rights New Jersey" or "DRNJ" means the organization designated by the Governor to be the agency to implement, on behalf of the State of New Jersey, the Protection and Advocacy System established under the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. §§15041-15045.

"Division" means the Division of Developmental Disabilities.

"Ethics committee" means a multi-disciplinary committee, independent of the Division and designated by the Division Director or his or her designee in accordance with N.J.A.C. 10:48B-2.1 that shall have a consultative role, when the Bureau of Guardianship Services is the guardian, in reviewing critical areas of decision-making.

"Family" means spouse, domestic partner as defined in P.L. 2006, c. 103, (N.J.S.A. 26:8A-3), children, parents and siblings of the individual alleged to be in need of a guardian.

"Functional or other services" means those services and programs in the Division that are available to provide the individuals with developmental disabilities with education, training, rehabilitation, adjustment, treatment, care and protection. Functional or other services shall include residential care, case management, social supervision and day programming.

"Guardian" means an individual or agency appointed by a court of competent jurisdiction or who is otherwise legally authorized and responsible to act on behalf of a minor or incapacitated adult to ensure provision for the health, safety and welfare of the individual and to protect his or her rights