### XIII Mental Retardation Guardianship Authority

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Mental Retardation Guardianship

Introduction

Authority

2. 45 CFR 84 (Nondiscrimination on basis of handicap).
22. Minnesota Rules, parts 9525.0010 to 9525.0430 (Department of Human Services, Services to Individuals Who Are Mentally Retarded).
MN Department of Human Services
Social Services Manual

Mental Retardation Guardianship

Based on rules and statutes as of ….

Administration of the Mental Retardation Protection Act

The Commissioner shall establish such rules and regulations consistent with the Mental Retardation Protection Act as he may find to be necessary for the proper and efficient administration of the Act. In promulgating such regulations, the commissioner shall specifically develop methods of administration under which the local agencies shall have sufficient authority to effectively implement the duties and responsibilities of the Commissioner consistent with the Commissioner's ultimate responsibility as public guardian or public conservator.

Adapted from Minn. Stat. 252A.21, subd. 2

State Agency Adult Mental Retardation Guardianship Section

The Minnesota Mental Retardation Protection Act authorizes the Commissioner to supervise mentally retarded citizens who are unable to fully provide for their own needs and to protect such mentally retarded persons from violation of their human and civil rights by assuring that such individuals receive the full range of needed social, financial, residential, and habilitative services to which they are lawfully entitled.

Adapted from Minn. Stat. 252A.01

The "Adult Mental Retardation Guardianship Unit" is in the "Quality Assurance and Protective Services Division" of the State Agency. This Unit is responsible for the statutory requirements of the Commissioner of Human Services. This responsibility includes supervision of mentally retarded individuals who through court order are under the guardianship or conservatorship of the Commissioner. Inquiries may be addressed to:

   Adult Mental Retardation Guardianship Unit
   Quality Assurance and Protective Services Division
   Department of Human Services
   Centennial Office Building
   St. Paul, Minnesota 55155

The appointment by the court of the Commissioner as conservator or guardian shall be by the title of his office. The authority of the Commissioner as conservator or guardian shall cease upon the termination of his term of office and his authority shall vest in his successor or successors in office without further court proceedings.

Adapted from Minn. Stat. 252A.17

Definitions

Mental Retardation Protection Act-5214.01

1. Commissioner: Commissioner of Human Services or his designees.

Minn. Stat. 252A.02, subd. 3
2. Conservatee: A mentally retarded person for whom the court has appointed a public conservator.  
   Minn. Stat. 252A.02, subd. 10

3. Interested Person: An interested responsible adult, including but not limited to, a public official, guardian, spouse, parent, legal counsel, adult child, or next of kin of an allegedly mentally retarded person.  
   Minn. Stat. 252A.02, subd. 11

4. Licensed Physician: A person licensed under the laws of Minnesota to practice medicine or a medical officer of the government of the United States while in Minnesota in performance of his official duties.  
   Minn. Stat. 252A.02, subd. 5

5. Mentally Retarded Person: Any person who has been diagnosed as having significantly sub average intellectual functioning existing concurrently with demonstrated deficits in adaptive behavior such as to require supervision and protection for his welfare or the public welfare.  
   Minn. Stat. 252A.02, subd. 2

   Minn. Stat. 252A.02, subd. 6

7. Public Conservator: The Commissioner of Human Services when exercising some, but not all the powers designated in the Mental Retardation Protection Act.  
   Minn. Stat. 252A.02, subd. 8

   Minn. Stat. 252A.02, subd. 7

9. State Institution: A regional center or other residential facility operated by the State of Minnesota or any other state.  
   Minn. Stat. 252A.02, subd. 4

10. Ward: A mentally retarded person for whom the court has appointed a public guardian.  
    Minn. Stat. 252A.02, subd. 9

Other Definitions  
XIII-5214.02

Further definitions are as follows:

1. County of Guardianship Responsibility: The county, as determined at the time of the court hearing on guardianship or conservatorship to which the commissioner delegated the responsibilities of guardianship or conservatorship.
Based on rules and statutes as of ….

(See SSM XIII-5222) The county of responsibility retains general supervisory responsibility for the person under guardianship or conservatorship throughout the duration of the guardianship or conservatorship. (See SSM XIII-5230 for responsibilities) (Minn. Stat. 252A.15, subd. 3 and Minn. Stat. 252A.19)

NOTE: The county of guardianship responsibility may or may not be the county of service or financial responsibility as explained in SSM Part III-4000 or Part III-5000.

2. Supervising Agency: The supervising agency may be a county agency different from the county of guardianship responsibility. The supervising agency upon agreement made with the county of guardianship responsibility fulfills designated supervisory responsibilities. When a mentally retarded ward or conservatee moves or plans to move to another county, the county of guardianship responsibility shall refer the ward or conservatee to the county where the person is living, or plans to live, with a request for fulfilling the supervisory responsibilities of guardianship or conservatorship and may issue consents on behalf of the ward or conservatee.

Adapted from Part 9525.0020 to 9525.0100

The county of guardianship responsibility shall obtain from the supervising county a written agreement to supervise. This agreement shall include specified areas of supervision. Areas of supervision may not be restricted without agreement by both agencies.

Terminology

Whenever the term "guardianship" is used in the Mental Retardation Protection Act and this Chapter of the Social Services Manual, it shall include "conservator," and the term "ward" shall include "conservatee" unless another intention clearly appears from the context.

Minn. Stat. 252A.21, subd. 3

Purposes for the Mental Retardation Protection Act

The purposes for the Mental Retardation Protection Act are as follows:

1. To provide, within statutorily defined limits and by means of initial comprehensive evaluations and annual reviews, a program of state guardianship or state conservatorship for mentally retarded persons. Such a program is tailored to meet the individual needs, abilities and disabilities of the person under review.

Adapted from Minn. Stats. 252A.15, and 252A.16

Persons Under Guardianship and Conservatorship Guardianship

A mentally retarded person who also complete supervision and protection may be placed under Commissioner's guardianship.

Adapted from Minn. Stat. 252A.11
Mental Retardation Guardianship

Based on rules and statutes as of …..

Conservatorship. A mentally retarded person who requires only limited supervision and protection (within the terms of SSM XIII-5231) may be placed under state conservatorship. An appointment of the Commissioner as conservator shall not constitute a judicial finding that the mentally retarded person is legally incompetent except for the restrictions which conservatorship places on the conservatee.

The appointment of a conservator shall not deprive the conservatee of the right to vote.

Near-Relative Involvement

The Mental Retardation Protection Act seeks to involve near-relatives (spouse, parent, sibling or adult child) if available, as consultants to the Commissioner on behalf of the ward/conservatee.

When acting as guardian or conservator of a mentally retarded individual, the Commissioner shall permit and encourage involvement by the parents and/or spouse of the ward in planning and decision-making on behalf of the ward/conservatee.

The Commissioner encourages near-relatives to seek private guardianship instead of Commissioner’s public guardianship whenever the near-relatives are willing and able to accept the responsibility to act as private guardians.

Procedures to Institute the Guardianship or Conservatorship Process

Introduction

The Mental Retardation Protection Act authorizes the Commissioner of Human Services to supervise and protect those mentally retarded citizens who are in need of the supervision and protection of a public guardian or conservator.

Nothing in the Mental Retardation Protection Act shall impair the right of individuals to establish private guardianships or conservatorship in accordance with applicable law.

NOTE: A court may appoint a guardian or conservator other than the Commissioner over both the person and the estate of an individual.
In any case in which the ward has a personal estate beyond that which is necessary for his personal and immediate needs, the Commissioner shall determine whether a guardian of the estate has been appointed for the ward. If no such guardian has been appointed, the Commissioner, after consulting with the parents, spouse, or nearest relative of the ward, may petition the probate court for the appointment of a private guardian or conservator of the estate of the ward.

Stat. 252A.11, subd. 4

NOTE: Combination of Commissioner's guardianship and guardianship by a private person (such as guardianship of the person by the Commissioner, and guardianship of the estate by a private person) and comparable conservatorships, are not only allowable, but also often most appropriate for the retarded person. A combination guardianship would only be used when the Commissioner and the parties had different authorities over the ward/conservatee.

Proceeding

A proceeding may be started under the Mental Retardation Protection Act by "nomination" and by "petition".

Adapted from Minn. Stat. 252A.03 and 252A.06

Nomination

Nomination consists of a notarized letter to the Commissioner asking him to act as guardian or conservator for a particular person.

The person nominating the Commissioner may be:

1. An interested person.
2. The guardian or conservator of the person of the mentally retarded person who requests the Commissioner to act as his successor.
3. The mentally retarded person.

The Commissioner shall accept or reject the nomination in writing to the county court within 15 days of receipt of a comprehensive evaluation (see SSM XIII-5223) of the mentally retarded person prepared by the local agency.

1. The Commissioner must accept the nomination if the psychologist's report contained in the comprehensive evaluation concludes that the alleged mentally retarded person is, in fact, mentally retarded and in need of the supervision and protection of a conservator or guardian.
Based on rules and statutes as of ..... 

2. If the Commissioner rejects the nomination, the mentally retarded person, his parent, spouse, or relative may still file a verified petition for appointing the Commissioner conservator or guardian.

3. Acceptance of a nomination confers no authority on the Commissioner unless affirmed at a judicial hearing.

Adapted from Minn. Stat. 252A.03

If the Commissioner agrees to accept a nomination, the Commissioner, within 15 days of such acceptance, must petition in the county court of the county of residence of the mentally retarded person for his appointment to act as conservator or guardian of the mentally retarded person.

Minn. Stat. 252A.05

NOTE: The Commissioner designates the local agency in the county in which the proposed ward resides the responsibility to petition for the Commissioner at the time that the Commissioner accepts the nomination to be appointed guardian or conservator.

Petition XIII-5222.02

The Commissioner, the parent, spouse, or relative of a mentally retarded person or the mentally retarded person himself may directly petition the court for appointment of the Commissioner as public guardian or conservator. If the Commissioner is bringing the petition following acceptance of his nomination as conservator or guardian, the petition must state the name and address of the nominating person.

Contents of the petition shall include:

1. The name and address of the petitioner, and, in the case of a petition brought by a person other than the Commissioner, whether the petitioner is a parent, spouse, or relative of the proposed ward;

2. The name and address of the proposed ward;

3. The names and addresses of the nearest relatives and spouse, if any, of the proposed ward;

4. The probable value and general character of the proposed ward's real and personal property and the probable amount of the proposed ward's debts; and

5. The reasons and supporting facts that recommend conservatorship or guardianship.

Adapted from Minn. Stat. 252A.06
Comprehensive Evaluation

Contents

The comprehensive evaluation shall consist of:

1. A diagnosis of a proposed ward's physical condition, prepared under the direction of a licensed physician.

2. A report on the proposed ward's intellectual capacity and functional abilities, prepared by a psychologist who is qualified in the diagnosis and treatment of mental retardation. The psychologist's report shall specify the tests and other data used in reaching its conclusions.

3. A report on the proposed ward's social history and adjustment, prepared by a social worker who is experienced in working with mentally retarded persons.

   The social worker's report shall describe what educational, medical, and social services previously have been made available to the person under review and shall specify the data used in reaching its conclusions.

4. The reports of the psychologist and social worker shall contain recommendations as to the ability of the proposed ward to function in society without supervision.

   Adapted from Minn. Stat. 252A.02, subd. 12

All reports shall be less than one year old.

Adapted from Minn. Stat. 252A.07, subd. 1

Responsibility of the Local Social Services Agency

Upon an order from the Commissioner, proposed county of guardianship or conservatorship responsibility shall arrange for the comprehensive evaluation of the proposed ward prior to the establishment of guardianship or conservatorship.

The evaluation shall be conducted in a public or private hospital, school, mental health center, or other suitable and appropriate facility.

Minn. Stat. 252A.04, subd. 1

The comprehensive evaluation shall be prepared and forwarded to the Commissioner within 90 days of the date the Commissioner orders the evaluation.

Minn. Stat. 252A.04, subd. 3

Note: A copy of the comprehensive evaluation shall be retained by the local agency, and the local agency shall retain a copy to be submitted later to the court.
Filing Evaluation with Court

The filing of either a nomination or petition requires the Commissioner to order the local agency of the county in which the mentally retarded person lives to prepare a comprehensive evaluation within 90 days of the Commissioner's order.

1. When a petition is brought by the Commissioner following acceptance of his nomination, a copy of the comprehensive evaluation shall be filed with the petition.

2. If a petition is brought by a person other than the Commissioner and a comprehensive evaluation has been prepared within a year of the filing of the petition, the Commissioner shall forward a copy of the comprehensive evaluation to the court upon notice of the filing of said petition.

3. If a comprehensive evaluation has not been prepared within a year of the filing of the petition, the Commissioner, upon notice of the filing of a petition, shall arrange for a comprehensive evaluation to be prepared and forwarded to the court within 90 days.

4. A copy of the comprehensive evaluation shall be made available by the court to the proposed ward, his counsel, the county attorney, the attorney general, and the petitioner.

5. No action for the appointment of a public guardian may proceed to hearing unless a comprehensive evaluation has been first filed with the court; provided, however, that such action may proceed and a guardian appointed if the director of the local agency responsible for conducting the comprehensive evaluation, has filed an affidavit that the proposed ward refused to participate in the comprehensive evaluation and the court finds on the basis of clear and convincing evidence that the proposed ward is mentally retarded and in need of the supervision and protection of a guardian.

Notice of Petition and Hearing

Notice of the filing of the petition shall be promptly forwarded by the court to the proposed ward, his counsel, his spouse or nearest relative, the county attorney, the Attorney General, the State Agency Mental Retardation Section, and such other persons as the court directs.

1. Notice shall be personally served upon the proposed ward by a non-uniformed person.

2. The contents of all documents served shall be read to the proposed ward or served upon his counsel who shall, to the extent possible, explain the documents' meaning to the proposed ward.
Based on rules and statutes as of …..

3. If the proposed ward is a patient or resident of any institution, hospital, or other residential facility, notice by mail shall also be given to the chief executive officer or administrator thereof.

4. When a petition has been filed by a person other than the Commissioner, a copy of the petition and any other documents filed with or issued by the court shall be promptly forwarded by the court to the Commissioner.

5. The court shall fix a time and place for the hearing which shall be held no less than ten days nor more than 20 days from the filing of the comprehensive evaluation. The court, in its discretion, or upon the request of counsel and for good cause shown, may extend the time of the hearing for an additional 30 days.

6. The proposed ward, his counsel, his spouse, or nearest relative, the petitioner, the county attorney, and the attorney general, and such other persons as the court directs shall be given at least seven days written notice of the time and date of the hearing.

Adapted from Minn. Stat. 252A.08

Appointment of Counsel

Upon the filing of the petition, the court shall appoint an attorney for the proposed ward, unless such counsel is provided by others. Counsel shall visit with and, to the extent possible, consult with the proposed ward prior to the hearing and shall be given adequate time to prepare for the hearing. Counsel shall be given the full right of subpoena and shall be supplied with a copy of all documents filed with or issued by the court.

Adapted from Minn. Stat. 252A.09

Hearing

1. The proposed ward, the petitioner, and all other persons to whom notice has been given may attend the hearing and, except for counsel, may testify. The court shall notify such persons of their right to attend the hearing and to testify.

2. The proposed ward and the petitioner may present and cross-examine witnesses, including those participating in the preparation of the evaluation reports, and the court may in its discretion receive the testimony of any other person.

3. The court may exclude from the hearing any person not necessary for the conduct of the proceedings except those persons to whom notice was given and any other persons requested to be present by the proposed ward.

4. If, at the time of the hearing, the proposed ward has been under medical care, he shall have the same rights regarding limitation on the use of drugs, medication or other treatment prior to the hearing as are available to him prior to the comprehensive evaluation.
5. Subject to the right of the proposed ward to attend the hearing, the court may permit the proposed ward to be absent from the hearing if the court determines that such attendance would not be in the proposed ward's best interest and if the person conducting the hearing shall have observed and consulted with the proposed ward prior to the hearing. In any instance in which a proposed ward has been excused from the hearing, the court shall make findings of fact stating the basis for such action.

6. The hearing shall be conducted in a manner consistent with orderly procedure and in a physical setting not likely to have a harmful effect on the mental or physical health of the proposed ward. The hearing may be held at the proposed ward's residence or such other suitable and appropriate place as the court may determine.

7. In all such proceedings, the court shall have taken and preserved an accurate stenographic record or tape recording of the proceedings. The court shall not be bound by the evidence contained in the comprehensive evaluation, but shall make its determination upon the entire record. In all cases, the court shall find the facts specifically, state separately its conclusions of law, and direct the entry of an appropriate judgment.

8. The county attorney may appear and represent the petitioner or shall appear and represent the petitioner upon the request of the court or the petitioner. The petitioner shall be notified of his right to request that the county attorney appear. The attorney general may appear and represent the Commissioner in any proceedings brought pursuant to the Mental Retardation Protection Act.

9. If upon the completion of the hearing and consideration of the record, the court finds that the proposed ward is not mentally retarded or is mentally retarded, but not in need of the supervision and protection of a conservator or guardian, it shall dismiss the application.

10. If upon the completion of the hearing and consideration of the record, the court finds the proposed ward is mentally retarded and in need of the supervision and protection of a conservator or guardian, it shall enter judgment specifying the powers of the conservator or guardian.

Adapted from Minn. Stat. 252A.10

Cost of Hearings

The court shall allow and order paid to each witness subpoenaed the fees and mileage prescribed by law; to each physician, psychologist, or social worker who assists in the preparation of the comprehensive evaluation and who is not in the employ of the local or State Agency or area mental health-mental retardation board, a reasonable sum for his services and for travel; and to the ward's counsel, when appointed by the court, a reasonable sum for travel and for each day or portion of a day actually consumed in preparing for the hearing. Upon such order the county auditor shall issue a warrant on the county treasurer for payment of the amount allowed.
When the settlement of the ward is found to be in another county, the court shall transmit to the county auditor a statement of the expenses incurred. The auditor shall transmit the statement to the auditor of the county of the ward's settlement and this claim shall be paid as other claims against that county. If the auditor to whom this claim is transmitted denies the claim, he shall transmit it, together with his objections, to the Commissioner, who shall determine the question of settlement and certify his findings to each auditor.

If the claim is not paid within 30 days after such certification, an action may be maintained thereon in the district court of the claimant county.

Whenever venue of a proceeding has been transferred under the Mental Retardation Protection Act, the costs of such proceedings shall be reimbursed to the county of the ward's settlement by the state.

Adapted from Minn. Stat. 252A.20

Modification of Guardianship or Conservatorship

1. The Commissioner shall serve as guardian or conservator with all the powers awarded pursuant to the guardianship or conservatorship, until termination or modification by the court.

2. The Commissioner, ward, or any interested person may petition the appointing court, or the court to which venue has been transferred, for an order:
   a. To remove the guardianship.
   b. To limit or expand the powers of the conservatorship.
   c. To restore the ward or conservatee to full legal capacity.
   d. To review de novo any decision made by the public guardian or public conservator for or on behalf of a ward or conservatee.
   e. For such other order as the court may deem just and equitable.

3. Upon the filing of the petition the court shall fix the time and place for the hearing. Notice of the filing of the petition and of the hearing shall be provided as in SSM XIII-5223.

4. The Commissioner shall at the court's request arrange for the preparation of a comprehensive evaluation of the ward or conservatee.

5. Upon proof of the allegations of the petition, the court shall enter an order removing the guardianship or limiting or expanding the powers of the conservatorship or restoring the ward or conservatee to full legal capacity or may enter such other order as the court may deem just and equitable.
Based on rules and statutes as of ….

6. The county attorney may attend the hearing and may oppose the petition in the probate or county court and in the appellate courts if he deems it for the best interest of the public.

7. The Attorney General may appear and represent the Commissioner in such proceedings. The Commissioner shall support or oppose the petition if he deems such action necessary for the protection and supervision of the ward or conservatee.

8. In all such proceedings, the conservatee or ward shall be afforded an opportunity to be represented by counsel, and if neither the conservatee or ward nor others provide counsel, the court shall appoint counsel to represent the conservatee or ward.

Adapted from Minn. Stat. 252A.19

Persons Under Guardianship by Prior Law XIII-5229

The Mental Retardation Protection Act governs those persons under guardianship by law prior to 1975. Any interested person may nominate the Commissioner as conservator or may initiate conservatorship proceedings pursuant to the Mental Retardation Protection Act for any person committed to the guardianship of the Commissioner pursuant to any prior law.

Any proceeding brought pursuant to the Mental Retardation Protection Act shall have no retroactive effect on the placement of a mentally retarded ward in a state institution by the Commissioner unless the petition requests the court to review the need for further institutionalization.

Adapted from Minn. Stat. 252A.18

Delegation of Guardianship Conservatorship Responsibilities XIII-5230

The local social service agency in which the proposed ward or conservatee resides or if a proposed ward or conservatee is a patient in a hospital or nursing home as defined in Minn. Stat. 144.50 or 144A.01, or if a proposed ward or conservatee participates in a long-term sheltered workshop as defined in chapter 129A or is placed in a county as a result of a correctional program or a treatment plan for health rehabilitation, foster care, child care or training, at the time of making application and immediately prior thereto resided in another county. Then that other county shall accept the Commissioner's delegation of designated guardianship or conservatorship responsibilities.

Adapted from Minn. Stat. 252A.15, subd. 3; Minn. Stat/ 256D.18, subd. 2

NOTE: The county of guardianship will not change as a result of successive placements in one or more counties. An appeal may be made to the court for a change in the county of guardianship responsibility; however, the responsible county would need substantial evidence in order to convince the court of this change.

Adapted form 252A.19, subd. 2
Based on rules and statutes as of ….

NOTE: The county of guardianship responsibility may or may not be the county of financial responsibility. The county of guardianship responsibility shall make certain that all financial assistance for which the person is eligible is provided by the county of financial responsibility.

Guardianship/Conservatorship Responsibilities

Guardianship and conservatorship responsibilities are listed as follows. In many cases these responsibilities have been delegated to local social services agencies. (County of guardianship responsibility.)

In all cases the Commissioner or the local social services agencies acting on behalf of the Commissioner shall exercise supervisory authority over the ward in a manner that is least restrictive of the ward's personal freedom consistent with the need for supervision and protection.

Guardianship

The court may appoint the Commissioner guardian of a person if it determines that a guardian is needed to supervise and protect the retarded person through exercise of all powers designated below:

Powers of Guardian

The court may appoint the Commissioner conservator for the mentally retarded person if it determines that a conservator is needed to supervise and protect the retarded person through the exercise of some, but not all the powers reserved for guardians. The court may further restrict each individual power.

The powers of a guardian are as follows:

1. The power to exercise general supervisory authority over the ward. This includes choosing or changing the residence, care, habilitation, education, and employment of the ward, and the power to approve or withhold approval for the ward's request to sell or in any way encumber his personal and real property.

Powers of Guardian

This power has been delegated to the counties of guardianship responsibility with the exceptions of:

a. The power to consent to placement in a state institution for respite care.

b. The power to consent to state hospital commitment;
The power to consent to electro convulsive therapies.
(See SSM XIII-5138)

2. The power to take possession of the personal property of the ward and liquidate or hold it for the ward's benefit as provided in Minnesota Statutes, section 256.93.
   Minn. Stat. 252A.11, subd. 1(b)
   This power has been delegated to County of Guardianship Responsibility except for estate benefits to wards that shall be submitted to the Commissioner for deposit in the Social Welfare Fund. (See SSM)

3. The power to permit or withhold permission for the ward to marry.
   Minn. Stat. 252A.11, subd. 1(c)
   This power has been delegated to County of Guardianship Responsibility. (See SSM XIII-5282.05.

4. The power to approve or withhold approval of any contract, except for necessaries, which the ward may make or wish to make.
   Minn. Stat. 252A.11, subd. 1(d)
   This power has been delegated to County of Guardianship Responsibility.

5. The power to commence judicial action or defend against judicial action in the name of the ward.
   Minn. Stat. 252A.11, subd. 1(e)
   This power has been delegated to County of Guardianship Responsibility except that the Commissioner retains the power to consent to the adoption of a ward's child.

NOTE: Unless his/her parental rights are terminated by juvenile court, consent of a parent who is a ward or conservatee is required for adoption of his/her child.
   Adapted from Minn. Stat. 259.24

6. The power to consents to the ward's sterilization.
   Minn. Stat. 252A.11, subd. 1(f)
   NOTE: See SSM XIII-5282.02 for sterilization consent procedures.

7.a. The power to consent to surgical operations in non-emergency cases. (See SSM XII-5282.01).
   Minn. Stat. 252A.11, subd. 1(g)
   This power has been delegated to local County of Guardianship Responsibility

b. The power to consent to surgical operations to save life, limb, etc.
Based on rules and statutes as of ….

Minn. Stat. 252A.13, subd. 1

This power has been delegated to County of Guardianship Responsibility (See SSM XIII-5282.011)

c. The power to consent to emergency surgery.

Minn. Stat. 252A.13, subd. 1

This power has been delegated to County of Guardianship Responsibility

d. The power to consent to psychosurgery, resuscitation, abortion, or other controversial concerns is retained by the Commissioner.

NOTE: In all surgeries, except when a ward/conservatee resides in a state regional center, the near relative will be asked to sign first. In an emergency the near-relative will be informed after the County of Guardianship Responsibility gives consent. If there is no near-relative, or if the near-relative wishes no contact with the ward/conservatee, it should be so documented in the social service agency file.

8. The power to consent to the adoption of a ward as provided in Minn. Stat., section 259.24.

Minn. Stat. 252A.11, subd. 1(h)

This power has been delegated to County of Guardianship Responsibility.

Duties of Guardian or Conservator

The following duties are delegated to local social services agencies acting on behalf of the Commissioner as guardian or conservator to a mentally retarded individual:

1. The County of Guardianship Responsibility shall maintain close contact with the mentally retarded person no matter where such person is living in Minnesota and shall permit and encourage maximum self-reliance on the part of the mentally retarded person under his protection. and shall permit and encourage involvement by the parents and spouse of the ward, if any, in planning and decision-making on behalf of the ward.

   Adapted from Minn. Stat. 252A.15, subd. 1

2. In addition to the supervisory powers vested in the Commissioner by the court, the County of Guardianship Responsibility shall provide for an individualized program plan, which shall:

   a. Assure that educational services are provided to each ward, who is of school age;
   b. Assure that the medical and dental needs of each ward are met;
c. Arrange for therapeutic and habilitative services, adult education, vocational rehabilitation, or other appropriate programs for any adult ward who is still in need of training;

d. Arrange for counseling and assistance to the ward so as to maximize his potential and opportunities for social and financial independence.

Adapted from Minn. Stat. 252A.15, subd. 2

3. The County of Guardianship Responsibility shall provide an annual review of the physical, mental, and social adjustment and progress of every ward and conservatee. The annual review shall be sent to the Commissioner. A copy of this review shall be kept on file at the State Agency and may be inspected by the ward or conservatee, his parents, spouse, or relatives and such other persons as receive the permission of the Commissioner or County of Guardianship Responsibility.

4. The County of Guardianship Responsibility shall annually review the legal status of each ward or conservatee in light of the progress indicated in the annual review and make recommendations to the Commissioner regarding any changes which may be indicated such as an order to remove the guardianship, to limit or expand the powers of the conservatorship, or to restore the ward or conservatee to full legal capacity.

Adapted from Minn. Stat. 252A.16

5. The Commissioner, acting through local social services agencies, shall seek out those mentally retarded persons who are not under state guardianship and shall advise such persons as to the availability of suitable services and assistance. The provision of advice and guidance may be made without prior appointment by a court and shall not be dependent upon a finding of incompetency. The provision of such services by the Commissioner does not authorize the care, treatment, supervision or any control over any mentally retarded person.

Adapted from Minn. Stat. 252A.14

6. A social services record shall be maintained by the County of Guardianship Responsibility for each ward, conservatee, and mentally retarded person receiving services either in the county or in a state or private residential facility. (See SSM XIII-5265)

Adapted from Minn. Stat. 13.01 to 13.87

Limitation on Guardianship or Conservatorship State Institution XIII-5243

The Commissioner shall not place a ward or conservatee in a state institution except:

1. Pursuant to the Minnesota Commitment Act (Minn. Stat. 253B. (See SSM XIII-5138)

2. For outpatient services.
3. For the purpose of receiving temporary care for a specific time not to exceed 90 days in any calendar year with the concurrence of the responsible county welfare board and the chief executive officer of the hospital or his designee.

Minn. Stat. 252A.11, subd. 3

State and private residential facilities serve as treatment and rehabilitation resources to the county. The residents of the facility are clients of the county welfare and human services boards. Accordingly, the services provided at the residential facility shall be developed in accord with the individual program plan developed by the County of Guardianship Responsibility.

(See SSM XIII-5232). Admission plans shall specify training objectives and calendar time to achieve objectives; i.e., 6 weeks, 6 months, etc. The County of Guardianship Responsibility shall set goals to re-evaluate these objectives at least annually.

Services of the residential facility shall be used only as long as the services fit the needs of the person and the individual program plan developed by the County of Guardianship responsibility.

Appeals to District Court

The Commissioner may appeal from an order of the court entered under the Mental Retardation Protection Act to the district court in the manner prescribed by Minnesota Statutes, sections 525.71 to 525.731, for appeals by the state. Any persons, other than the Commissioner, aggrieved by an order of the court entered under the Act may appeal to the district court in the manner prescribed by Minnesota Statutes, sections 525.71 to 525.731.

Adapted from Minn. Stat. 252A.21, subd. 1

Rights of Persons Under Mental Retardation Guardianship/Conservatorship

(See SSM V-2500)

County of Guardianship Responsibility Records

Social services records shall contain:

1. Information indicating short and long-range goals.
2. Plans and methods to achieve them within a specified time.
3. Ward's, conservatee's, and family's response and participation. Social services records in the county of guardianship responsibility shall contain the following information:
   a. Ward's or conservatee's name, verified birth date, family history, marriage date and place, names, and birth dates of children.
   b. A copy of warrant of commitment including powers of the conservator or guardian.
Based on rules and statutes as of ….

c. A copy of the comprehensive evaluation.

d. An individualized service plan including date of plan and time for accomplishment of each item.

e. Date of placement and location of ward.

f. Living arrangement.

g. Parents and siblings and their addresses.

h. Ward's or conservatee's involvement with his family and efforts to strengthen this involvement where desirable.

i. Medical and dental examination records.

j. Interagency supervision agreement.

k. Where parents of a minor child have divorced, custody determination from divorce decree.

l. Copies of any consents issued by the agency or by the Commissioner on behalf of the ward or conservator.

m. Copies of consents obtained by appropriate persons on behalf of the Commissioner.

n. Copies of all psychological evaluations.

Adapted from Minn. Stat 252A

o. Copy of court order for termination of parental rights or transfer of custody where this is applicable.

p. Final assessment at closing giving basis for closure and note about disposition of Social Welfare Fund money. (See SSM)

NOTE: The county of guardianship responsibility shall retain an open record on a ward or conservatee until the ward or conservatee dies or until a court order terminates the guardianship or conservatorship.

Adapted from Minn. Stats. 13.01 to 13.87

Death of a Ward

The County of Guardianship Responsibility shall notify the Mental Retardation Guardianship Section of the date and cause of death of a ward.

The County of Guardianship Responsibility must report the death of a ward/conservatee within 72 hours via the telephone to the State Guardianship Office. A written report stating the date, time, placed of death and cause of death must be submitted within two weeks. Other information
Based on rules and statutes as of ….

may include a coroner's report, if an autopsy was deemed necessary; a vulnerable adult's report, if an investigation was begun or completed; a Health Department report, if an investigation was begun or completed; and any other report, if the death was considered suspect and in investigation was completed, because some information or investigations may not be completed in this interval, the county of guardianship responsibility is required to file an interim report within two weeks if a full report cannot be completed within the required timeframe. A final report must be submitted when information or investigation is completed.

Upon the death of a ward and notification of the State Agency, the social services record may be closed.

Adapted from Minn. Stat. 13.01 to .87 and 252A

**Destruction of Record by County of Guardianship Responsibility XIII-52880**

Record of a person previously under Commissioner's guardianship or conservatorship may not be destroyed prior to the expiration of the time period for destruction of county agency records.

Adapted from Minn. Stat. 13.01-.87

**Consents XIII-5290**

**Administration of Consents XIII-5291**

The County of Guardianship Responsibility or agreed upon supervising agency shall:

1. Keep a copy of all consents in the ward's social services record.
2. Send copies of consents to all persons and agencies involved.
3. Obtain the ward or conservatee's approval for the action requiring consent if he can comprehend. A local agency accepting supervision from the county of financial responsibility may issue consents on behalf of the county of responsibility.

**Consents Delegated XIII-5292**

The following consents, and all other social services consents not included in XIII-5231 through XIII-5232 are delegated to all supervising county welfare and human services boards. Near-relative consent shall be obtained prior to issuing agency consent in matters of surgery (unless the ward resides in a Regional Center) near-relatives when available will be kept informed of consents made on behalf of the ward/conservatee. In case of relative conflict for surgery or of unusual consents, the local agency shall contact the State Agency Mental Retardation Guardianship Section.

Adapted from Minn. Stat 252A.15, subd. 3
Non-Emergency Surgical Procedures

1. The ward's physician has indicated a medical need for surgery necessary to save life, health, eyesight, hearing, or limb of a ward/conservatee.

2. The county acting for the Commissioner shall facilitate obtaining consent for the medical facility from a near-relative for a surgical operation necessary to save the life, health, eyesight, hearing, or limb of any ward or conservatee. The county acting as guardian should be knowledgeable of all surgeries performed on wards/conservatees.

3. If there is no near-relative or no near-relative is found after a diligent search, the county, acting for the Commissioner, has the authority to consent to surgical operations.

   Adapted from Minn. Stat. 252A.13, subs. 1 and 3

Emergency Treatment

If an emergency situation arises where a surgical procedure is necessary to save life, health, eyesight, hearing, or limb of a ward/conservatee and there is not sufficient time to contact the near-relative, the following procedure will apply:

1. The county acting as guardian may give consent in emergency situations, without contacting the near-relative first.

2. The county will inform the near-relative that consent has been given for an emergency situation, as soon as possible thereafter.

   Adapted from Minn. Stat. 252A.13, subs. 1 and 3

-5292.013 Other Situations

1. If the county acting as guardian does not agree that surgery requested is in the best interest of the ward, a second, independent medical assessment may be obtained.

2. If the community hospital/medical center will not accept the near-relative's authorization for surgery, the county acting as guardian may give consent.

3. If at any time there is a disagreement, an appeal may be directed to the State Guardianship Office for final decision.

4. The county will inform the near-relative, if any, of decisions rendered in their absence.

   Adapted from Minn. Stat. 252A.13, subs. 1 and 3

Documentation

Although it is not required, it is recommended that all surgical authorizations be done in writing prior to the surgery being performed. All surgeries done on a ward/conservatee should be noted in the client's file.
Wards Committed to a Regional Treatment Center

Wards/conservatees committed to a regional treatment center are governed by Minn. Stat. 253B.03 (see SSM). The consent of the guardian or conservator is sufficient to authorize surgery, unless the conservatee has retained that right. Consent of the family is not valid. However, family involvement is always encouraged. In an emergency situation, if the county acting as guardian or the State Guardianship Office is not available to consent, the head of the treatment facility may consent to the surgery.

Adapted from Minn. Stat. 252A.13 and 253B.03

Conservatee

When a conservatee whose right to consent to surgery has not been restricted is admitted to a hospital for surgery, the chief medical officer shall determine if the person's medical condition is such that the person has sufficient capacity to make a responsible decision. If the person has such capacity, his consent shall be obtained before such surgery. In such cases, the person's consent shall be determinative and no other consent is necessary; provided, however, that in the case of a minor, consent shall also be obtained from his parent or near relative.

Minn. Stat. 252A.13, subd. 1

Liability

No person who consents to the performance of a surgical operation pursuant to the MR Protection Act shall be civilly or criminally liable for the performance or the manner of performing such operation. No person who acts within the scope of the authority conferred by such consent in the course of discharging his official duties shall be civilly or criminally liable for the performance of such operation, but the MR Protection Act shall not affect any liability, which he may incur as a consequence of the manner in which such operation is performed.

Adopted from Minn. Stat. 252A.13, subd. 1

Sterilization

Any conservatee whose right to sterilization has not been restricted may be sterilized only if such conservatee consents in writing or there is sworn acknowledgement by an interested person of a nonwritten consent by such conservatee.

The consent must certify that the conservatee has received a full explanation from a physician or registered nurse of the nature and irreversible consequences of the sterilization operation to the level of the conservatee's ability to understand.

No conservatee who is a minor may be sterilized without the written consent of his parent or near relative.
Mental Retardation Guardianship

Based on rules and statutes as of ….

Adapted from Minn. Stat. 252A.13, subd. 3

Commissioner and Relative Consent

Except as otherwise provided in XIII-5242.01 no person committed to the guardianship or conservatorship of the Commissioner may be sterilized unless the Commissioner consents to such operation and, if the ward is a minor, unless consent is also obtained from the ward's parent or near relative.

Adapted from Minn. Stat. 252A.13, subd. 4

Court Determination

In every case a county court shall determine if such operation is in the best interest of the ward. In making its determination, the court shall require the Commissioner to provide written reports from a licensed physician, a psychologist who is qualified in the diagnosis and treatment of mental retardation, and a social worker who is familiar with the ward's social history and adjustment. The reports shall consider whether sterilization is in the best interest of the ward and the medical report shall specifically consider the medical risks of sterilization and whether alternative methods of contraception would be as effective in protecting the best interest of the ward. The court shall appoint an attorney to represent the ward before the court, unless such counsel is provided by others.

Adapted from Minn. Stat. 252A.13, subd. 4