

Approval process for non-delegated public guardianship powers

NOTE: This page includes policy affected by the [April 27, 2021, eList](#) in response to COVID-19. Follow the applicable policy in the eList. DHS has not made these changes to this CBSM page.

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Legal authority	Minn. Stat. §252A.01 to §252A.21 , Uniform Guardianship and Protective Proceedings Act (Minn. Stat. §524.5-101 to §524.5-502) , Minn. Stat. §626.557, subd. 10(c), 2-3 , Minn. R. 9525.3010 to 9525.3100	
Overview	<p>The county-designated public guardian must receive the DHS commissioner's written approval to give:</p> <ul style="list-style-type: none"> • Orders for do not resuscitate/do not intubate (DNR/DNI) • Orders for limited medical treatment (LMT) • Consent to participate in research • Consent for temporary care at a regional treatment center • Consent for electroconvulsive therapy (also requires court approval) • Consent for experimental treatment (also requires court approval) • Consent for psychosurgery (also requires court approval) • Consent for sterilization (also requires court approval). <p>The following sections explain the approval process for each non-delegated, public guardianship power.</p>	
DNR/DNI orders	<p>To request the power to give a DNR/DNI order, the county-designated public guardian must:</p> <ol style="list-style-type: none"> 1. Obtain a health summary from the person's physician that documents the physician's recommendation for DNR/DNI orders and at least one of the following: <ul style="list-style-type: none"> • Person suffers from a terminal condition that causes their health to deteriorate, and this condition is expected to lead to the person's death • Person's condition is such that resuscitation attempts likely would be unsuccessful or cause them additional harm 2. Prepare a request that documents the following: <ul style="list-style-type: none"> • County-designated public guardian's agreement with the physician's recommendation • Family's involvement in the process and agreement with the physician's recommendation, if applicable • Request is based on the person's medical condition rather than their developmental disability diagnosis • Additional information that elaborates on the person's health and functional status and notes declines and changes in quality-of-life indicators 3. Submit all of the materials, including the health summary, to the DHS Public Guardianship Office. <p>Additional information If any interested party objects to DNR/DNI orders (e.g., the person's family), a medical ethics committee should review the request before the county-designated public guardian submits it to the DHS Public Guardianship Office.</p>	
LMT orders (including hospice)	<p>To request the power to give an LMT order, the county-designated public guardian must:</p> <ol style="list-style-type: none"> 1. Obtain a health summary from the person's physician that documents the physician's recommendation for LMT orders and at least one of the following: <ul style="list-style-type: none"> • Person suffers from a terminal condition that causes their health to deteriorate, and this condition is expected to lead to the person's death 	

	<ul style="list-style-type: none"> • within one year • Person’s condition is such that attempts at resuscitation likely would be unsuccessful or cause them additional harm <p>2. Prepare a request that documents the following:</p> <ul style="list-style-type: none"> • County-designated public guardian’s agreement with the physician’s recommendation • Family’s involvement in the process and agreement with the physician’s recommendation, if applicable • Reason for limiting, withholding or withdrawing medical treatment • Request is based on the person’s medical condition rather than their developmental disability diagnosis • Additional information that elaborates on the person’s health and functional status and notes declines and changes in quality-of-life indicators <p>3. Submit all of the materials, including the health summary, to the DHS Public Guardianship Office.</p> <p>Additional information</p> <p>The request for the power to give an LMT order may be for either:</p> <ul style="list-style-type: none"> • Specific limitations (e.g., dialysis during the end stage of kidney disease, chemotherapy or radiation for cancers) • A general limitation of treatment (e.g., hospice, withholding or withdrawing life support, palliative care arrangement). <p>Choosing hospice restricts other treatment and payment. This choice may affect the care the person receives from residential providers. For more information, see CBSM – Hospice.</p> <p>If any interested party objects to LMT orders (e.g., the person’s family), a medical ethics committee should review the request before the county-designated public guardian submits the request to the DHS Public Guardianship Office.</p>
<p>Consent to participate in research</p>	<p>To request the power to give consent for the person to participate in research, the county-designated public guardian must:</p> <p>1. Prepare a request that includes all of the following:</p> <ul style="list-style-type: none"> • Purpose of the research • Expected duration of the person’s participation • Statement of approval from the person’s physician • Description of the research’s goals • Description of the reasonably expected benefits the person or others may receive from the research • Description of appropriate alternative procedures or courses of treatment, if any, that might be advantageous to the person • Experimental treatment of any kind • Extent to which research records that identify the person will be confidential • Contact information for someone who can answer questions about the research and the person’s rights • Contact information for someone if the person experiences a research-related injury • Statement that documents the following: <ul style="list-style-type: none"> a. Person’s participation is voluntary b. Person’s refusal to participate will not result in a penalty or loss of

	<ul style="list-style-type: none"> • benefits to which they are otherwise entitled <ul style="list-style-type: none"> c. Person may stop participating at any time without a penalty or loss of benefits • Verification that the research the county-designated public guardian wants to give consent for both: <ul style="list-style-type: none"> a. Meets the requirements of what is considered research (see the additional information section) b. Preserves the person’s dignity, identity and rights <p>2. Include the following information in the request if the research involves more than minimal risk:</p> <ul style="list-style-type: none"> • Explanations of any available compensation and/or medical treatments if injury occurs • Where to receive more information about available compensation and/or medical treatments <p>3. Submit the request to the DHS Public Guardianship Office.</p> <p>Additional information Research is a study in which a person or group of people receives a treatment/intervention and is compared to another similar person or group of people who receive either no treatment/intervention or an alternative treatment/intervention. The study must be conducted under a formal design. Research does not include:</p> <ul style="list-style-type: none"> • Educational testing • Participation in surveys or interviews • Medication trials.
<p>Consent for temporary care at a regional treatment center</p>	<p>To request the power to give consent for the person to temporarily receive care at a regional treatment center, the county-designated public guardian must:</p> <p>1. Prepare a request that includes all of the following:</p> <ul style="list-style-type: none"> • Anticipated length of the person’s stay • Treatment goals • Plan for community placement within 90 days of their admission to the regional treatment center • Statement of approval from the person’s physician <p>2. Submit the request to the DHS Public Guardianship Office.</p> <p>Additional information If the person is expected to stay at the regional treatment center more than 90 days, the county-designated public guardian must follow the civil commitment process (see Minnesota Judicial Branch – Mental health and civil commitment).</p>
<p>Consent for electroconvulsive therapy, experimental treatment or psychosurgery</p>	<p>To request the power to give consent for the person to receive electroconvulsive therapy, experimental treatment or psychosurgery, the county-designated public guardian must:</p> <ol style="list-style-type: none"> 1. Visit the person to observe their condition 2. Inform the person of the procedure, potential risks and reasons for the procedure in a way they can understand 3. Obtain the nearest relative’s opinion, to the extent possible 4. Obtain a physician’s recommendation that includes the following: <ul style="list-style-type: none"> • Description of the person’s serious or life-threatening disease, pathological condition or behavioral pattern that the intended surgery, drug, therapy or treatment is proposed to treat • Explanation of more accepted methods that have been tried and found ineffective • Explanation that comparable or satisfactory alternative surgeries, drugs,

	<ul style="list-style-type: none"> therapies or treatments that are approved or generally recognized in the treatment of the disease, pathological condition or behavior are not available <p>5. Make a recommendation for or against the procedure</p> <p>6. Prepare a request that includes verification that the county-designated public guardian met the requirements above</p> <p>7. Submit all of the materials, including the physician’s recommendation, to the DHS Public Guardianship Office.</p> <p>Additional information</p> <p>If any interested party objects to the person receiving electroconvulsive therapy, experimental treatment or psychosurgery, a medical ethics committee should review before the county-designated public guardian submits the request to the DHS Public Guardianship Office.</p> <p>Requests for the power to give consent for electroconvulsive therapy, experimental treatment or psychosurgery also require court approval.</p>
Consent for sterilization	<p>To request the power to give consent for the person to receive sterilization, the county-designated public guardian must do all of the following:</p> <p>1. Have a qualified professional provide the following documentation:</p> <ul style="list-style-type: none"> Reason sterilization is proposed Assurance that the sterilization is necessary, the least intrusive method for alleviating the problem presented and in the best interest of the person Medical reports that specifically consider the medical risks of sterilization, consequences of not performing the sterilization and whether alternative methods of contraception could be used to protect the best interest of the person Statement that the qualified professional recommends sterilization <p>2. Submit all of the materials to the DHS Public Guardianship Office.</p> <p>Additional information</p> <p>The following professionals may provide the documentation required in step 1:</p> <ul style="list-style-type: none"> Licensed physician Psychologist who is qualified in developmental disability diagnosis and treatment Social worker or case manager for the person who is familiar with their social history and adjustment. <p>Requests for the power to give consent for sterilization also require court approval.</p>
How to submit and receive documentation	<p>The county should submit the required materials to the DHS Public Guardianship Office via either:</p> <ul style="list-style-type: none"> Email: DHS.PublicGuardianship@state.mn.us Fax: 651-431-7527. <p>If the county does not submit all the required materials, the DHS Public Guardianship Office may request more information before the DHS commissioner approves.</p> <p>When the DHS commissioner approves the county-designated public guardian to exercise one of the non-delegated powers, the DHS Public Guardianship Office will send the documentation to the county via encrypted email.</p>
Additional resources	<p>CBSM – How to establish public guardianship</p> <p>CBSM – Public guardianship</p> <p>CBSM – Hospice</p> <p>DHS – Frequently asked questions about public guardianship</p>

Guardianship Decision Tree, DHS-5836A (PDF) Minnesota Judicial Branch – Mental health and civil commitment
