

## **N.J.A.C. 10:45**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 50 No. 11, June 4, 2018

***New Jersey Administrative Code > TITLE 10. HUMAN SERVICES > CHAPTER 45. GUARDIANSHIP SERVICES***

### **Title 10, Chapter 45 -- Chapter Notes**

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#### **Statutory Authority**

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##### **CHAPTER AUTHORITY:**

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

#### **History**

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##### **CHAPTER 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 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.

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 45, Guardianship Services, was scheduled to expire on December 6, 2017. See: 43 N.J.R. 1203(a).

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## **N.J.A.C. 10:45-1.1**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 50 No. 11, June 4, 2018

***New Jersey Administrative Code > TITLE 10. HUMAN SERVICES > CHAPTER 45. GUARDIANSHIP SERVICES > SUBCHAPTER 1. GENERAL PROVISIONS***

### **§ 10:45-1.1 Authority**

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**(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.

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## **N.J.A.C. 10:45-1.2**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 50 No. 11, June 4, 2018

***New Jersey Administrative Code > TITLE 10. HUMAN SERVICES > CHAPTER 45. GUARDIANSHIP SERVICES > SUBCHAPTER 1. GENERAL PROVISIONS***

### **§ 10:45-1.2 Guiding principles**

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**(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.

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## **N.J.A.C. 10:45-1.3**

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***New Jersey Administrative Code > TITLE 10. HUMAN SERVICES > CHAPTER 45. GUARDIANSHIP SERVICES > SUBCHAPTER 1. GENERAL PROVISIONS***

### **§ 10:45-1.3 Definitions**

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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 consistent with N.J.S.A. 3B:12-57, 30:4-165.1, et seq., and the judgment of guardianship.

"Guardian ad litem" means an individual appointed by a court to perform an extremely limited type of guardianship, namely to protect a child's or incapacitated adult's interest during a single instance of some form of court proceeding or litigation.

"Guardian of the person" means an individual or agency appointed by a court of competent jurisdiction to make personal decisions in an individual's life, excluding decisions about an individual's property.

"Guardianship services" means those services and programs provided by the Department of Human Services for the purpose of implementing its responsibility toward the individual with developmental disabilities for whom it is performing the services of guardian of the person.

"Incapacitated individual" means an adult individual who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic alcoholism or other cause to the extent that the person lacks sufficient capacity to govern himself or herself and manage his or her affairs.

"Individual" means a person receiving services from the Division of Developmental Disabilities who has been determined to be in need of a guardian either through adjudication by the court or through an administrative process pursuant to N.J.S.A. 30:4-165.13.

"Informed consent" means a process of decision making based upon an understanding of the proposed action or treatment, risks, benefits, alternatives and possible outcomes.

"Interdisciplinary Team" or "IDT" means a group that consists of the individual receiving services, the plan coordinator, the legal guardian, the Division case manager, the parents or family member(s) (if the adult who has not been adjudicated incapacitated desires that the parent or family member be present), advocates and friends, those persons who work most directly with the individual served and professionals and representatives of service areas who are relevant to the identification of the individual's needs and the design and evaluation of programs to meet them. The individual may identify those additional persons he or she wishes to be present.

"Interested party" means anyone involved in the life of a child or adult that might have input into the decision being rendered. An interested party includes, but is not limited to, family, provider staff, medical staff or team members from the IDT.

"Least restrictive" is the principle of seeking solutions that are the least restrictive and intrusive to an individual's liberty and that preserve, to the maximum extent possible, the individual's autonomy while providing needed protections.

"Service component" means any developmental center, regional office of community services of the Division or a purchase of care facility.

"Service plan" means a written, individualized habilitation plan, consistent with the requirements of N.J.S.A. 30:6D-10 through 12, developed with the individual, and/or his or her legal guardian and the IDT. It is an outcome-based planning tool that, at a minimum, identifies each individualized program, support and/or service requested by and provided to the individual, for which the individual demonstrates a need. It identifies the person and private agency responsible for its implementation. The complexity of the service plan will vary according to the individual's interests, preferences and needs. The format of the service plan may vary in accordance with the requirements of the specific program, service or support received by the individual.

"Substitute judgment" is the principle of decision making that substitutes, as the guiding force in any surrogate decision made by the guardian, the decision the individual would have made when competent. Substitute judgment promotes the underlying values of self-determination and well-being of the individual.

"Temporary guardianship services" means guardianship services provided by BGS to a minor that may continue for up to one year prior to judicial review.

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## **N.J.A.C. 10:45-2.1**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 50 No. 11, June 4, 2018

***New Jersey Administrative Code > TITLE 10. HUMAN SERVICES > CHAPTER 45. GUARDIANSHIP SERVICES > SUBCHAPTER 2. ELIGIBILITY REQUIREMENTS FOR GUARDIANSHIP SERVICES***

### **§ 10:45-2.1 Eligibility requirements for adults**

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**(a)**An individual 18 years or older is eligible for guardianship services if he or she is receiving or has been formally determined by the Division to be eligible for services from the Division and has been:

1. Administratively determined to be in need of guardianship by the administrative head of the service component, based upon an assessment and recommendation of a team of professional staff and referred to BGS before April 12, 1985; or
2. Adjudicated as an incapacitated individual by a court of competent jurisdiction and has had the BGS appointed by the court as guardian of the person.

**(b)**Notwithstanding the provisions of (a) above, every individual receiving guardianship services from BGS without prior judicial review shall be reevaluated pursuant to N.J.S.A. 30:4-165.13, to determine whether the need for such services continues to exist and, if so, application shall be made to a court of competent jurisdiction for appointment of a guardian of the person for that individual.

## N.J.A.C. 10:45-2.2

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 50 No. 11, June 4, 2018

***New Jersey Administrative Code > TITLE 10. HUMAN SERVICES > CHAPTER 45. GUARDIANSHIP SERVICES > SUBCHAPTER 2. ELIGIBILITY REQUIREMENTS FOR GUARDIANSHIP SERVICES***

### **§ 10:45-2.2 Eligibility requirements for children**

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**(a)**An individual under the age of 18 years is eligible for temporary guardianship services if he or she is receiving services from the Division and is without parent or guardian after the requirements of (b)2 below have been satisfied.

**(b)**In the instance of a child determined eligible for guardianship services where no parent or guardian is deemed available, staff of the service component shall verify such status by:

**1.**Documentation that the child's legal guardian(s) is deceased and that there are no other relations or close family friends available to serve as guardian; or

**2.**Documentation that the following efforts to locate the child's guardian(s) have been unsuccessful:

**i.**Notice by letter in the primary language of the guardian, if known, by regular mail and certified mail, return receipt requested, to the guardian's last known address. Up to 30 days should be given for a response to the letters;

**ii.**Inquiry by letter among any known relatives, friends and current or former employers of the guardian(s); and

**iii.**Inquiries, using the guardian's last known or suspected address, to the local post office, the Division of Motor Vehicles and any social service and law enforcement agencies known to have had contact with the guardian(s) both in New Jersey and in other states. Failure to receive response to the inquiries within 45 days shall constitute a negative response.

**(c)**The DRNJ shall be notified in writing by the BGS within 10 days of initiation, termination or change of guardianship services for a child whose parents are deemed unavailable.

## **N.J.A.C. 10:45-3.1**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 50 No. 11, June 4, 2018

***New Jersey Administrative Code > TITLE 10. HUMAN SERVICES > CHAPTER 45. GUARDIANSHIP SERVICES > SUBCHAPTER 3. CONTINUATION OF ELIGIBILITY FOR GUARDIANSHIP SERVICES***

### **§ 10:45-3.1 Continuation of eligibility for adults**

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**(a)**Eligibility for guardianship services shall continue for an adult individual, as long as he or she remains a recipient of services from the Division and neither of the following has occurred:

- 1.A court order reversing a previous adjudication of incapacity and appointment of BGS as guardian; and
- 2.A change in status of an individual receiving guardianship services through an administrative determination prior to April 12, 1985, resulting from a review and reevaluation by the service component's inter-disciplinary team.

## **N.J.A.C. 10:45-3.2**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 50 No. 11, June 4, 2018

***New Jersey Administrative Code > TITLE 10. HUMAN SERVICES > CHAPTER 45. GUARDIANSHIP SERVICES > SUBCHAPTER 3. CONTINUATION OF ELIGIBILITY FOR GUARDIANSHIP SERVICES***

### **§ 10:45-3.2 Continuation of eligibility for children**

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**(a)** Eligibility for temporary guardianship services continues up to one year for a child, as long as he or she remains:

1. A recipient of services from the Division;
2. Under the age of 18 years. Prior to reaching the age of majority, an assessment shall be made as to the continuing need for a guardian as an adult, in accordance with the provisions of N.J.S.A. 30:4-165.4 et seq., and N.J.A.C. 10:43; and
3. Without a guardian to act on the child's behalf.

**(b)** When a parent or appointed guardian who had been inaccessible again becomes available to exercise his or her role:

1. Guardianship services shall immediately and automatically cease with written notification to the parent or appointed guardian, if temporary guardianship services are provided.
2. A termination or change of guardianship is required by the court, if BGS has been appointed by a court as guardian.
3. BGS shall refer the guardianship matter to the Division of Youth and Family Services (DYFS) for disposition, if a parent or a guardian who is deemed by BGS to be unsuitable returns.

**(c)** A referral to DYFS for appointment of a guardian shall be made within 90 days of the initiation of BGS guardianship services.

## **N.J.A.C. 10:45-4.1**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 50 No. 11, June 4, 2018

***New Jersey Administrative Code > TITLE 10. HUMAN SERVICES > CHAPTER 45. GUARDIANSHIP SERVICES > SUBCHAPTER 4. ROLE AND RESPONSIBILITIES OF THE BUREAU OF GUARDIANSHIP SERVICES***

### **§ 10:45-4.1 Distinct role of BGS staff**

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**(a)**BGS staff shall function distinctly and independently from the service components and shall maintain independent decision-making from the service components.

**(b)**The needs of the individual are paramount; therefore, BGS shall make reasonable efforts to select the most appropriate course of action that is the least restrictive of the individual's freedom, rights and ability to control his or her environment. To that end, BGS staff shall make reasonable efforts to accomplish (b)1 through 10 below:

1. Build a relationship with the individual, to the extent possible, that is based upon mutual respect and trust in order to advocate for what the individual wants, or be able to make decisions in the best interest of the individual, should the individual be unable to express his or her wishes;
2. Protect the individual from actual or potential injury, neglect, exploitation, undue influence and abuse. BGS staff will, where appropriate:
  - i. Report suspicions to appropriate Division staff;
  - ii. Initiate an Unusual Incident Report;
  - iii. Provide input into investigations;
  - iv. Advocate for needed interventions; and
  - v. Initiate legal action;
3. Safeguard the individual's rights in accordance with statutory and case law, and regulations. BGS will, where appropriate:
  - i. Inform the individual of his or her rights and responsibilities;
  - ii. Explain the content and meaning of the guardianship court order;
  - iii. Advocate with appropriate staff;
  - iv. Initiate Unusual Incident Report;

**v.** Report violations of individual rights to the Human Rights Committee if all other levels of resolution have been exhausted; or

**vi.** Consult with outside sources including, but not limited to:

**(1)** Ethics Committee;

**(2)** Disability Rights New Jersey;

**(3)** Law Enforcement Agencies; and

**(4)** Legal Consultation and Representation;

**4.** Encourage the individual's participation in decision-making by:

**i.** Seeking the wishes of the individual;

**ii.** Giving due respect to the individual's wishes;

**iii.** Advocating for the individual's wishes;

**iv.** Recognizing and/or developing opportunities for decision-making; and

**v.** Encouraging/promoting self-reliance, independence, self-care and self-advocacy;

**5.** Make decisions in accordance with the authority granted in the court order, utilizing the principle of informed consent and in consideration of the individual's identification with particular ethnic, religious and cultural values. In evaluating a requested action or treatment, the guardian will, as appropriate:

**i.** Review the nature of the requested action or treatment;

**ii.** Gather adequate information on the issue by using available resources including, but not limited to:

**(1)** Search the Internet;

**(2)** Read books and articles; and

**(3)** Consult with experts in the field;

**iii.** Gather needed reports;

**iv.** Discuss the proposed action or medical treatment with involved professionals;

**v.** Seek input from the individual, family and caregivers;

**vi.** Explore possible alternatives;

**vii.** Explain the proposed action or treatment and possible alternatives to the individual in the presence of family, involved professionals and caregivers, as indicated;

**viii.** Seek the voluntary assent of the individual;

**ix.** Ensure that the individual's assent is free of coercion;

**x.** Weigh the risks, benefits, alternatives and anticipated outcomes of proposed action or treatment;

- xi.** Refer to an ethics committee if needed;
  - xii.** Give or withhold consent using substitute judgment;
  - xiii.** Give or withhold consent using the best interest standard;
  - xiv.** Communicate the decision to the individual, involved professionals, family and caregivers; or
  - xv.** Evaluate outcome of decision;
- 6.** Encourage the individual to maintain contact with his or her family and respect and support the individual's wishes with regard to contact with family unless such contact is not in the best interest of the individual. Where appropriate, discuss family contact with the individual during the annual visit or at the service plan meeting and facilitate family contact at the request of the individual;
- 7.** Encourage and support the development of social relationships that contribute to the well-being of the individual by:
- i.** Advocating for opportunities for positive social interaction; and
  - ii.** Taking steps, where applicable, to determine the individual's capacity for consensual sex and to provide the needed education and information in order for the individual to exercise the right of sexual expression, including information about sexual health, birth control and assistance in choosing the most appropriate form of birth control;
- 8.** Contribute to the service plan by:
- i.** Representing the individual at the service plan meeting through personal attendance or by providing written or verbal suggestions/recommendations prior to the meeting, if not able to attend;
  - ii.** Encouraging the individual's participation at the meeting;
  - iii.** Reviewing the completed service plan and provide written input, as needed;
  - iv.** Reviewing decisions made by the individual during the year;
  - v.** Reviewing the individual's understanding of guardianship;
  - vi.** Reviewing the individual's perception of his or her need for guardianship;
  - vii.** Reviewing the appropriateness of guardianship;
  - viii.** Recommending a referral to the psychologist for guardianship assessment, as needed;
  - ix.** Recommending, as applicable, that the individual be provided with needed education and information;
  - x.** Advocating for a burial plan to be included in the service plan; and
  - xi.** Giving or withholding approval for the service plan;
- 9.** Make end-of-life decisions in accordance with N.J.A.C. 10:48B; and
- 10.** Protect the individual's right to privacy by giving or withholding consent for:

**i.**Release of confidential information, including protected health information in accordance with the Health Insurance Portability and Accountability Act (HIPAA) 45 CFR Parts 160 and 164;

**ii.**Photographing the individual, if the photograph is to be used for display or public dissemination in accordance with N.J.A.C. 10:41-3.3.

**(1)**Consent for photographs for any public purpose shall be contingent on the individual's willingness to participate; and

**iii.**Audio taping and videotaping the individual for other than treatment purposes or health care operations in accordance with N.J.A.C. 10:41-3.3.

**(1)**Consent for audio taping and videotaping for any public purpose shall be contingent on the individual's willingness to participate.

**(c)**In accordance with the individual's human rights and the authority granted in the court order, BGS staff shall have the responsibility and authority to act in areas that include, but are not limited to:

**1.**Reviewing the adequacy of the services being provided;

**2.**Communicating with interested parties, especially family, caregivers and staff regarding the status, needs and wishes of the individual;

**3.**Providing or withholding consent for any change in residence or program, transfer or discharge; and

**4.**Providing or withholding consent for the following:

**i.**Elective medical or dental procedures that require specific authorization, as well as the general consent sufficient for routine medical or dental care;

**ii.**The use of behavior support plans with identified behavior risk elements;

**iii.**The service plan;

**iv.**The release of records or other confidential information and for the publication of photographs, newspaper articles, books, etc., that identify the individual;

**v.**The use of psychotropic medication as part of an on-going treatment plan to address maladaptive behavior; or

**vi.**Visits, vacations, trips or other absences from the residence or day program. General permission may be granted for recurring absences with parents, family members or other approved individuals.

## **N.J.A.C. 10:45-4.2**

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***New Jersey Administrative Code > TITLE 10. HUMAN SERVICES > CHAPTER 45. GUARDIANSHIP SERVICES > SUBCHAPTER 4. ROLE AND RESPONSIBILITIES OF THE BUREAU OF GUARDIANSHIP SERVICES***

### **§ 10:45-4.2 Functions and duties of BGS staff**

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**(a)**In order to exercise their role and responsibilities, BGS staff shall be knowledgeable and informed about the individual's status, program and progress by means of the following:

- 1.Meeting with the individual at least once a year, including individuals in out-of-State Purchase of Care Facilities within one day driving distance from the BGS staff's assigned office;
- 2.Meeting the individual at least once every three months, if the individual is not visited by representatives from any other public or private agency, pursuant to N.J.S.A. 3B:12-57f.(2);
- 3.Reviewing the appropriate records including, but not limited to the DDD record, sponsor record or provider agency record;
- 4.Interviewing collateral staff including, but not limited to, case manager, sponsor or provider agency staff;
- 5.Maintaining regular contact with interested and/or involved family through attendance at IDT meetings, personal meetings, phone calls and correspondence;
- 6.Maintaining on-going written record of actions taken on behalf of the individual;
- 7.Preparing a report pertaining to the health and well-being of the individual; and
- 8.Sharing recommendations from the report with the service component.

**(b)**BGS shall maintain a file for each individual that includes:

- 1.An on-going written record of actions taken on behalf of the individual;
- 2.An annual report pertaining to the health and well-being of the individual;
- 3.BGS shall share recommendations with the service component.

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End of Document

## N.J.A.C. 10:45-4.3

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*New Jersey Administrative Code > TITLE 10. HUMAN SERVICES > CHAPTER 45. GUARDIANSHIP SERVICES > SUBCHAPTER 4. ROLE AND RESPONSIBILITIES OF THE BUREAU OF GUARDIANSHIP SERVICES*

### **§ 10:45-4.3 Guardianship services for a child whose parent or guardian is deemed unavailable**

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**(a)**Guardianship services initiated on the basis of the procedures set forth in N.J.A.C. 10:45-2.2(b) may be provided on a temporary basis for a maximum of one year without judicial appointment.

**(b)**During the course of providing temporary guardianship services, BGS shall render consent in certain critical areas of decision-making only after a review procedure shall have been conducted.

1. Critical areas of decision-making requiring review shall include the following:

i. A transfer, which involves a change of the individual's place of residence;

ii. A medical procedure, which entails major, irrevocable consequences including, but not limited to, amputation of a limb, abortion or removal or transplant of a vital organ; and

iii. A major change in the individual's service plan including, but not limited to, implementation of a behavior support plan involving the use of behavior risk elements as defined in N.J.A.C. 10:41-4.3.

2. When the need for consent in a critical area of decision-making arises, BGS staff shall renew attempts to locate the child's parent(s), unless the child is orphaned. The extent and timeframe for these efforts shall be proportionate to the emergent nature of the situation, but shall be documented. Within one working day of reaching conclusion that the parent(s) is/are unavailable, the matter shall be referred to the Chief of BGS at which time notice shall be given to the DRNJ.

3. Within one working day of receipt of the referral, the Chief of BGS, or his or her designee shall request a review by an ethics committee recognized by the Assistant Commissioner to complete such reviews.

**(c)**Recognition of ethics committees. The Assistant Commissioner or his or her designee shall identify standing ethics committees pursuant to N.J.A.C. 10:48B-3.1 that shall be

available for consultation to BGS whenever critical decisions as set forth in (b)1 above need to be made.

**(d)**The role and function of ethics committees shall be as follows:

- 1.The ethics committee chairperson shall arrange a case conference as soon as possible, but no later than five working days after receiving the referral from BGS;
- 2.Participants shall include a representative of DRNJ, a representative of BGS and interested parties, in addition to the ethics committee members;
- 3.The committee shall consider the critical decision identified and give a recommendation on how to proceed; and
- 4.The recommendation of the ethics committee shall be forwarded in writing to BGS as soon as possible, but no later than 48 hours.

**(e)**Once the recommendation of the ethics committee is received, the Chief of the BGS, or his or her designee, shall consider:

- 1.The recommendation of the ethics committee;
- 2.The recommendation of the Division of Developmental Disabilities staff; or if a medical issue, the recommendations of the treating physician;
- 3.The recommendation of the IDT, if available; and
- 4.Any additional information deemed relevant to the decision.

**(f)**Upon consideration, and using the best interest standard, the Chief of the BGS, or his or her designee, shall make a decision on behalf of the minor and communicate the decision to interested parties. The Chief of the BGS or his or her designee shall provide written notification of the decision to the DRNJ no later than the next business day.

**(g)**In a medical emergency, where any delay of decision making on behalf of the child would pose a serious threat to the child's life or health, BGS shall render a decision without a review. The existence of a medical emergency must be certified in writing by a licensed physician. The physician's certification shall be maintained in the child's client record. BGS shall inform the DRNJ of its decision as soon as possible, but no later than the next business day.

## **N.J.A.C. 10:45-5.1**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 50 No. 11, June 4, 2018

***New Jersey Administrative Code > TITLE 10. HUMAN SERVICES > CHAPTER 45. GUARDIANSHIP SERVICES > SUBCHAPTER 5. LIMITATIONS OF BGS AUTHORITY***

### **§ 10:45-5.1 Procedures requiring court approval**

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**(a)** Pursuant to N.J.S.A. 30:6D-5(a), BGS staff shall not consent to the following procedures but may, with the approval of the Chief of the BGS, refer the matter to a court of competent jurisdiction for appointment of a guardian ad litem:

1. Shock treatment;
2. Psychosurgery;
3. Sterilization; or
4. Medical, behavioral or pharmacological research as experimentation.

## **N.J.A.C. 10:45-6.1**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 50 No. 11, June 4, 2018

***New Jersey Administrative Code > TITLE 10. HUMAN SERVICES > CHAPTER 45. GUARDIANSHIP SERVICES > SUBCHAPTER 6. RESPONSIBILITY OF SERVICE COMPONENT TO INFORM BGS***

### **§ 10:45-6.1 Duty to inform BGS**

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**(a)**The service component staff, community care providers and provider agency staff shall inform BGS staff promptly and comprehensively regarding any significant life events, proposed changes to residence or program or unusual incidents involving individuals being served by BGS including, but not limited to, the following areas:

**1.**Medical issues, as follows:

- i.**Changes in an individual's medical, psychiatric, behavioral or emotional status;
- ii.**Changes in prescribed medication;
- iii.**Additional diagnoses identified;
- iv.**Hospitalizations; and
- v.**Significant or new specialist's appointments/consultations;

**2.**Program issues, as follows:

- i.**A minimum of two weeks notification of service plan meeting;
- ii.**Advanced notice of IDT meetings and nature of the IDT issue;
- iii.**Advanced notice of proposed changes in residence or program, transfer or discharge;
- iv.**Advanced notice of proposed respite placement; and
- v.**Problems or changes in residence or program including, but not limited to:
  - (1)**Behavior problems;
  - (2)**Emergency respite placement; and
  - (3)**Chronic absenteeism;

**3.**Family issues, as follows:

- i.**Family concerns/issues;
- ii.**Changes in family information; and

**iii.**Reappearance of family;

**4.**Unusual incidents; and

**5.**Changes in case manager.

**(b)**Service component, community care provider and agency staff shall advise BGS of the following within one working day:

**1.**Clinical conclusion that the individual no longer needs a guardian;

**2.**The request of an individual to see his or her BGS guardian;

**3.**Missing status or failure to return from vacation;

**4.**Alleged or suspected abuse, neglect, exploitation or denial of rights;

**5.**Serious illness or injury;

**6.**Emergency placement or respite; and

**7.**Death, including the circumstances, cause, results or investigation, if any.

**(c)**Failure to notify BGS of events listed in this section shall be considered a violation of the individual's rights and, therefore, reportable as an unusual incident.