

9525.3055 NONDELEGATED CONSENT.

Subpart 1. **Generally.** The department retains the authority to provide consent in the areas described in this part. County staff acting as public guardians do not have authority to grant consent under subparts 2 to 4.

Subp. 2. **Do not resuscitate orders.** The county staff acting as public guardian shall submit an application for a "do not resuscitate" order to the department for written approval. Consent for a "do not resuscitate" order must not be given in the absence of a terminal condition, unless the physician states that initiating cardiopulmonary resuscitation would be medically futile or would harm the ward. The application must contain documentation of the following:

- A. that the county staff acting as public guardian has visited the ward;
- B. that the ward has been informed of the reasons and consequences of the order, and to the extent the ward is able to comprehend, the ward agrees to the order;
- C. that the county staff acting as public guardian has made reasonable efforts to obtain the opinion of the nearest relative;
- D. that the physician's written recommendation includes:
 - (1) a statement indicating whether the "do not resuscitate" order is appropriate;
 - (2) a statement of the ward's physical condition including current physical and adaptive skills, the terminal condition, and deterioration that has occurred since the onset of the terminal condition;
 - (3) a statement that death is imminent or that initiating cardiopulmonary resuscitation would be medically futile or would harm the ward. For purposes of this part, death occurring within one year is considered imminent; and
 - (4) a statement of the ward's prognosis given the terminal condition or medically futile condition;
- E. a statement that the request for the order is not based on discrimination because of the ward's developmental disability;
- F. upon request by the department, a report from a biomedical ethics committee, if one exists within the health care institution, that affirms that the proper procedures have been followed by the health care providers on behalf of the ward; and
- G. a recommendation by the county staff acting as public guardian for or against the request.

Subp. 3. **Limited medical treatment.** The county staff acting as public guardian shall submit an application to the department for written approval. The standards in subpart

2 govern the application for limited medical treatment. For purposes of this part, limited medical treatment means a life-sustaining treatment that has been deemed through ethical decision making, to be useless or gravely burdensome to the ward.

Subp. 4. **Research.** The county staff acting as public guardian shall submit an application to the department for written approval for the ward's participation in research, except for research such as educational tests, survey procedures, and interviews as exempted under Code of Federal Regulations, title 45, section 46.101(b). The application must contain the following information required for informed consent under Code of Federal Regulations, title 45, section 46.116:

- A. an explanation of the purposes of the research;
- B. the expected duration of the ward's participation;
- C. a description of the procedures to be followed;
- D. identification of any procedures which are experimental;
- E. a description of any reasonably foreseeable risks or discomforts to the ward;
- F. a description of any benefits to the ward or to others which may reasonably be expected from the research;
- G. a description of appropriate alternative procedures or course of treatment, if any, that might be advantageous to the ward;
- H. a statement that describes the extent, if any, to which the confidentiality of records that identify the ward will be maintained;
- I. for research involving more than minimal risk, an explanation about whether any compensation is available, and an explanation about whether medical treatments are available if injury occurs and, if so, what they consist of or where further information may be obtained;
- J. an explanation of whom to contact for answers to questions about the research and the ward's rights, and whom to contact in the event of a research-related injury to the ward;
- K. a statement that participation is voluntary, that refusal to participate will involve no penalty or loss of benefits to which the ward is otherwise entitled, and that the ward may discontinue participation at any time without penalty or loss of benefits; and
- L. the additional elements of informed consent as required under Code of Federal Regulations, title 45, section 46.116(b), must also be included in the application for informed consent, when relevant.

Subp. 5. **Temporary care placement.** The county staff acting as public guardian shall request the department's written approval for a ward's temporary placement at a regional

center. A ward's admission to a regional center for the purpose of receiving temporary care must not exceed 90 calendar days in any calendar year. The number of days of temporary care needed must be specified at the time of the ward's admission. The request must include a plan for establishment of a community placement for the ward within 90 calendar days of the date of temporary placement.

Statutory Authority: *MS s 252A.21*

History: *17 SR 2276; L 2013 c 59 art 3 s 21*

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