

1 Department of Human Services

2

3 Adopted Permanent Rules Relating to Public Guardianship for
4 Persons with Mental Retardation

5

6 Rules as Adopted

7 9525.3010 SCOPE.

8 Subpart 1. **Applicability.** Parts 9525.3010 to 9525.3100
9 implement Minnesota Statutes, chapter 252A, by setting standards
10 that govern the responsibility of county boards in providing
11 public guardianship services to persons with mental retardation.
12 Parts 9525.3010 to 9525.3100 do not apply to persons with
13 related conditions as defined in Minnesota Statutes, section
14 252.27, subdivision 1a. All guardianship responsibilities in
15 parts 9525.3010 to 9525.3100 are delegated by the commissioner
16 to the county of guardianship responsibility, unless otherwise
17 stated. The commissioner may modify or rescind the delegation
18 of these guardianship responsibilities in whole or in part if a
19 county fails to comply with parts 9525.3010 to 9525.3100 or when
20 the action is found to be in the best interest of the ward. For
21 purposes of parts 9525.3010 to 9525.3100, the term "ward"
22 includes "conservatee," the term "guardianship" includes
23 "conservatorship," and the term "public guardian" or "guardian"
24 includes "public conservator" or "conservator," unless otherwise
25 stated.

26 Subp. 2. **Purpose.** The purpose of parts 9525.3010 to
27 9525.3100 is to:

28 A. provide supervision and protection to persons with
29 mental retardation who are unable to fully provide for their own
30 needs and for whom no qualified person is willing and able to
31 act as private guardian;

32 B. set standards that the department and local
33 agencies are to follow in the provision of public guardianship
34 services;

35 C. safeguard the decision making powers of persons

1 with mental retardation so that they are not restricted beyond
2 the clearly established need; and

3 D. assist persons with mental retardation in
4 receiving those services to which they are entitled under state
5 and federal law.

6 9525.3015 DEFINITIONS.

7 Subpart 1. **Scope.** For the purposes of parts 9525.3010 to
8 9525.3100, the following terms have the meanings given to them
9 in this part.

10 Subp. 2. **Aversive procedure.** "Aversive procedure" has the
11 meaning given it in part 9525.2710, subpart 4.

12 Subp. 3. **Best interest.** "Best interest" means the
13 principle of decision making that weighs the desires and
14 objectives of the ward and the benefits and harms to the ward of
15 a particular act or course of action, based on reasonable
16 alternatives, and selects the alternative that provides the most
17 benefit and least harm.

18 Subp. 4. **Biomedical ethics committee.** "Biomedical ethics
19 committee" means a multidisciplinary group established by a
20 health care institution to address ethical dilemmas which arise
21 within the institution.

22 Subp. 5. **Case management.** "Case management" means the
23 administration and services provided under Minnesota Statutes,
24 section 256B.092.

25 Subp. 6. **Case manager.** "Case manager" has the meaning
26 given it in part 9525.0015, subpart 5.

27 Subp. 7. **Commissioner.** "Commissioner" means the
28 commissioner of the Minnesota Department of Human Services or
29 the commissioner's designated representative.

30 Subp. 8. **Conservatee.** "Conservatee" means a person with
31 mental retardation for whom the court has appointed a public
32 conservator.

33 Subp. 9. **Contract.** "Contract" has the meaning given it in
34 part 9525.0015, subpart 7.

35 Subp. 10. **County of guardianship responsibility.** "County

1 of guardianship responsibility" means the county social services
2 agency in the county in which guardianship has been established
3 by the court.

4 Subp. 11. County staff acting as public guardian. "County
5 staff acting as public guardian" means the person designated by
6 the county board to exercise public guardianship
7 responsibilities delegated to the local agency.

8 Subp. 12. Department. "Department" means the Minnesota
9 Department of Human Services.

10 Subp. 13. Deprivation procedure. "Deprivation procedure"
11 has the meaning given it in part 9525.2710, subpart 12.

12 Subp. 14. Do not resuscitate. "Do not resuscitate" means
13 a physician's order placed in the ward's medical chart to
14 withhold cardiopulmonary resuscitation (CPR) in the event of
15 cardiopulmonary arrest.

16 Subp. 15. Electroconvulsive therapy or electroshock
17 therapy. "Electroconvulsive therapy" or "electroshock therapy"
18 means a treatment by which a medically controlled seizure is
19 produced by passing an electric current across part of the brain.

20 Subp. 16. Experimental treatment. "Experimental treatment"
21 means drugs, therapies, or treatments that are unproven, have
22 been confined largely to laboratory use, or have progressed to
23 limited human application and trials, and lack wide recognition
24 from the scientific community as a proven and effective measure
25 of treatment.

26 Subp. 17. Individual service plan. "Individual service
27 plan" means the written plan, developed by the service planning
28 team, containing the components listed in Minnesota Statutes,
29 section 256B.092.

30 Subp. 18. Informed consent. "Informed consent" means the
31 principle that the consent is valid only if the person giving
32 consent understands the nature of the treatment, the benefits,
33 the risk of harm to the ward, the alternatives, and can give a
34 reason for selecting a particular alternative. Informed consent
35 requires that the person giving consent:

36 A. is able to receive and assimilate relevant

1 information;

2 B. has the capacity to make reasoned decisions based
3 upon relevant information;

4 C. is giving consent voluntarily and without
5 coercion;

6 D. understands the nature of the diagnosis, the
7 prognosis, and the current clinical condition; and

8 E. understands the risk of harm to the ward and the
9 benefits of all treatment alternatives, including risks and
10 benefits of no treatment.

11 Subp. 19. **Least restrictive alternative.** "Least
12 restrictive alternative" means the alternative that is the least
13 intrusive and most normalized given the level of supervision and
14 protection required for each individual ward. This level of
15 supervision and protection allows risk taking to the extent that
16 there is no reasonable likelihood that serious harm will happen
17 to the ward or others.

18 Subp. 20. **Licensed physician.** "Licensed physician" means
19 a person defined in Minnesota Statutes, section 252A.02,
20 subdivision 5.

21 Subp. 21. **Local agency.** "Local agency" means the county
22 of guardianship responsibility or the supervising agency.

23 Subp. 22. **Near relative.** "Near relative" means a spouse,
24 parent, adult sibling, or adult child as defined in Minnesota
25 Statutes, section 252A.02, subdivision 6.

26 Subp. 23. **Person with mental retardation.** "Person with
27 mental retardation" has the meaning given it in part 9525.0015,
28 subpart 20.

29 Subp. 24. **Psychotropic medication.** "Psychotropic
30 medication" means a medication prescribed to treat mental
31 illness and associated behaviors or to control or alter
32 behavior. The major classes of psychotropic medications include:

33 A. antipsychotic (neuroleptic);

34 B. antidepressant;

35 C. antianxiety;

36 D. antimania;

1 E. stimulant;
 2 F. sedative-hypnotic; and
 3 G. antiobsessive-compulsive;
 4 H. ~~antiaggression; and~~
 5 ~~I. mood-stabilizers~~ other medications prescribed for
 6 the purpose of controlling mood, mental status, or behavior.

7 Subp. 25. Public conservator. "Public conservator" means
 8 ~~the commissioner-of-human-services~~ department staff acting as
 9 public conservator or the county staff acting as public
 10 conservator when exercising some, but not all the powers
 11 designated in Minnesota Statutes, section 252A.111.

12 Subp. 26. Public guardian. "Public guardian" means the
 13 ~~commissioner-of-human-services~~ department staff acting as public
 14 guardian or the county staff acting as public guardian when
 15 exercising all of the powers designated in Minnesota Statutes,
 16 section 252A.111.

17 Subp. 27. Regional center or regional treatment center.
 18 "Regional center" or "regional treatment center" means a
 19 state-operated facility for persons with mental illness, mental
 20 retardation, or chemical dependency that is under direct
 21 administrative authority of the commissioner.

22 Subp. 28. Research. "Research," as defined in Code of
 23 Federal Regulations, title 45, section 46.102(d), means a
 24 systematic investigation designed to develop or contribute to
 25 generalized knowledge.

26 Subp. 29. Residential service. "Residential service" has
 27 the meaning given it in part 9525.0015, subpart 30.

28 Subp. 30. State facility. "State facility" has the
 29 meaning given it in Minnesota Statutes, section 246.50,
 30 subdivision 3. State facility includes state-operated
 31 community-based services.

32 Subp. 31. Sterilization. "Sterilization" means any
 33 medical procedure, treatment, or operation performed for the
 34 purpose of rendering a person permanently incapable of
 35 reproducing.

36 Subp. 32. Supervising agency. "Supervising agency" means

1 the local agency that, upon agreement with the county of
 2 guardianship responsibility, fulfills designated guardianship
 3 responsibilities.

4 Subp. 33. **Terminal condition.** "Terminal condition" means
 5 an incurable or irreversible condition that is expected to
 6 result in death and for which the administration of medical
 7 treatment will serve only to prolong the dying process.

8 Subp. 34. **Ward.** "Ward" means a person with mental
 9 retardation for whom the court has appointed a public guardian.

10 9525.3020 PERSONS SUBJECT TO PUBLIC GUARDIANSHIP.

11 Subpart 1. **Private guardianship preferred.** The
 12 commissioner, acting through the local agency, shall seek
 13 parents, near relatives, and other interested persons to assume
 14 a private guardianship appointment as a preferred alternative
 15 over public guardianship.

16 Subp. 2. **Commissioner as adviser.** The commissioner,
 17 acting through the local agency, shall seek out persons with
 18 mental retardation who are not under public guardianship but are
 19 in need of guardianship services and advise them of the
 20 availability of services and assistance.

21 Subp. 3. **Guardian of the estate.** When a ward has a
 22 personal estate beyond that which is necessary for the ward's
 23 personal and immediate needs, the county staff acting as public
 24 guardian shall:

25 A. determine whether a guardian of the estate has
 26 been appointed;

27 B. determine whether a guardian of the estate is
 28 necessary under the criteria in Minnesota Statutes, section
 29 525.54, subdivision 3, if no guardian of the estate has been
 30 appointed; and

31 C. petition the probate court in the county of
 32 guardianship responsibility for the appointment of a private
 33 guardian of the estate, if a guardianship of the estate is
 34 determined to be necessary.

35 9525.3025 PROCESS OF APPOINTING A PUBLIC GUARDIAN.

1 Subpart 1. **Nomination of commissioner.** Under Minnesota
2 Statutes, section 252A.03, subdivision 1, nomination of the
3 commissioner to act as public guardian is made by submitting a
4 notarized sworn request directly to the commissioner. The
5 commissioner may be nominated by any of the following:

6 A. the person with mental retardation;

7 B. an interested person, including a public official,
8 spouse, parent, adult sibling, legal counsel, adult child, or
9 next of kin; and

10 C. the current private guardian of the person who is
11 unable or unwilling to continue to act as guardian and who
12 requests the commissioner to act as public guardian.

13 Subp. 2. **Comprehensive evaluation.** Upon receipt of the
14 written nomination, the commissioner shall order the local
15 agency of the county in which the proposed ward resides, to
16 arrange for the comprehensive evaluation of the proposed ward.
17 The local agency shall complete and file the comprehensive
18 evaluation according to Minnesota Statutes, section 252A.04.
19 The local agency shall prepare and forward the comprehensive
20 evaluation to the commissioner within 90 days of the date the
21 commissioner orders the evaluation. When the proposed ward is
22 under medical care, the requirements regarding drugs,
23 medications, and other treatments under Minnesota Statutes,
24 section 252A.04, subdivision 2, apply. The comprehensive
25 evaluation must consist of the following reports required under
26 Minnesota Statutes, section 252A.02, subdivision 12:

27 A. a medical report on the health status and physical
28 condition of the proposed ward;

29 B. a report on the proposed ward's intellectual
30 capacity and functional abilities; and

31 C. a report from the case manager that includes the
32 most current assessment of individual service needs, the most
33 current individual service plan, if applicable, and a
34 description of contacts with and responses of near relatives of
35 the proposed ward about the notification to them that a
36 nomination for public guardianship has been made and that they

1 may seek private guardianship.

2 Subp. 3. **Commissioner's acceptance or rejection of**
3 **nomination.** Under Minnesota Statutes, section 252A.03, the
4 commissioner shall accept or reject the nomination in writing to
5 the nominating person within 20 working days of receipt of the
6 comprehensive evaluation. If the commissioner rejects the
7 nomination, the person, parents, spouse, or near relatives may
8 file a petition to appoint the commissioner as public guardian
9 under Minnesota Statutes, section 252A.06. The commissioner
10 shall accept the nomination if the following criteria are met:

11 A. the person was diagnosed as being a person with
12 mental retardation;

13 B. the person is in need of the supervision and
14 protection of a guardian; and

15 C. no qualified person is willing to become a private
16 guardian.

17 Subp. 4. **Petition.** When the commissioner agrees to accept
18 a nomination for appointment as public guardian, the local
19 agency shall petition on behalf of the commissioner within 20
20 working days of receipt of the commissioner's acceptance, under
21 Minnesota Statutes, section 252A.05. The petition must include
22 the items specified in Minnesota Statutes, section 252A.06,
23 subdivision 2.

24 Subp. 5. **Filing the comprehensive evaluation.** Under
25 Minnesota Statutes, section 252A.07, subdivision 1, when a
26 petition is brought by the commissioner or local agency after
27 the acceptance of the nomination, a copy of the comprehensive
28 evaluation must be filed with the petition. If the petition is
29 brought by a person other than the commissioner or local agency
30 and a comprehensive evaluation has been prepared within a year
31 of the filing of the petition, the commissioner shall forward a
32 copy of the comprehensive evaluation to the court upon notice of
33 filing of the petition. If a comprehensive evaluation has not
34 been prepared within a year of the filing of the petition, the
35 local agency or the commissioner, upon notice of filing of a
36 petition, shall arrange for a comprehensive evaluation to be

1 prepared and forwarded to the court within 90 days. A copy of
2 the comprehensive evaluation must be made available according to
3 Minnesota Statutes, section 252A.07, subdivision 2.

4 Subp. 6. **Exception.** A comprehensive evaluation must be
5 filed with the court before a court hearing. However, the
6 action may proceed pursuant to the exception under Minnesota
7 Statutes, section 252A.07, subdivision 3.

8 Subp. 7. **Notice of hearing.** The notice of hearing of the
9 petition for appointment of public guardian is governed by
10 Minnesota Statutes, sections 252A.081 and 525.55, which require
11 that notice be personally served upon the proposed ward by a
12 nonuniformed officer.

13 Subp. 8. **Hearing.** The public guardianship hearing is
14 governed by Minnesota Statutes, section 252A.101.

15 9525.3030 LIMITS OF GUARDIANSHIP POWERS AND DUTIES.

16 Under Minnesota Statutes, section 525.56, a guardian has
17 only those powers necessary to provide for the demonstrated
18 needs of the ward. The guardian is granted the duty and power
19 to exercise supervisory authority over the ward in a manner that
20 limits civil rights and restricts personal freedoms only to the
21 extent necessary to provide needed care and services. The
22 department staff acting as public guardian or county staff
23 acting as public guardian shall intervene under parts 9525.3010
24 to 9525.3100, only if the court has determined that the ward is
25 incapable of exercising certain rights.

26 9525.3035 GENERAL STANDARDS FOR PUBLIC GUARDIANSHIP.

27 Subpart 1. **Generally.** For purposes of parts 9525.3010 to
28 9525.3100, public guardianship responsibilities are divided into
29 the following four general functions:

- 30 A. planning;
31 B. protection of rights;
32 C. consent determination; and
33 D. monitoring and evaluation of services.

34 Subp. 2. **Planning.** The county staff acting as public
35 guardian shall participate in planning on behalf of the ward.

1 In planning for the ward, the county staff acting as public
2 guardian shall:

3 A. obtain knowledge of the ward in order to make
4 decisions on the ward's behalf that are in the best interest of
5 the ward;

6 B. consider availability of services and service
7 entitlements under applicable state and federal law in order to
8 plan for the individual needs of the ward and assist and
9 represent the ward;

10 C. determine that services are being provided in a
11 manner consistent with the least restrictive alternative and the
12 ward's best interest; and

13 D. pursue steps toward the development of
14 community-based services for the ward.

15 Subp. 3. **Protection of rights.** The county staff acting as
16 public guardian and the department staff acting as public
17 guardian shall protect the legal rights and interests of the
18 ward. The public guardian shall take appropriate action if the
19 ward's legal rights are abridged. If actions by providers of
20 public and private services do not meet the individual needs and
21 best interest of the ward, the county staff acting as public
22 guardian and the department staff acting as public guardian
23 shall pursue appropriate action on behalf of the ward according
24 to applicable state law.

25 Subp. 4. **General standards for consent determination.** The
26 county staff acting as public guardian and the department staff
27 acting as public guardian shall determine whether activities are
28 in the ward's best interest. Specific public guardianship
29 consent authority is described in parts 9525.3040 to 9525.3060.
30 The following standards apply to all consents regarding the ward.
31 Unless otherwise specified, when determining whether to consent
32 to any activity which affects the ward, the public guardian must
33 not consent to the activity, unless:

34 A. the activity is in the ward's best interest;

35 B. no less restrictive alternatives exist;

36 C. the activity is not in violation of the religious,

1 moral, or cultural beliefs of the ward; and

2 D. reasonable efforts have been made to obtain the
3 opinion of the nearest relative.

4 Subp. 5. Monitoring and evaluation. The county staff
5 acting as public guardian shall monitor and evaluate services
6 provided to the ward according to part 9525.3065.

7 Subp. 6. Release of information. The county staff acting
8 as public guardian or the department staff acting as public
9 guardian must not consent to the release of any information
10 about the ward, unless the release is:

11 A. in compliance with all applicable data practice
12 laws including Minnesota Statutes, chapter 13; and

13 B. in the ward's best interest.

14 9525.3040 POWERS AND DUTIES OF PUBLIC GUARDIAN.

15 Subpart 1. General powers. The powers and duties of the
16 public guardian are governed by Minnesota Statutes, sections
17 252A.111 and 525.56, subdivisions 1 to 3. The general powers
18 and duties of the county staff acting as public guardian are:

19 A. The power to determine the ward's place of
20 residence consistent with state and federal law, and the least
21 restrictive environment consistent with the ward's best interest.

22 B. The duty to determine that provision has been made
23 for the ward's care, comfort, maintenance needs, including food,
24 shelter, health care, social and recreational requirements, and
25 whenever appropriate, training, education, and habilitation or
26 rehabilitation.

27 C. The duty to take reasonable care of the ward's
28 clothing, furniture, vehicles, and other personal effects, and,
29 if other property requires protection, the power to seek
30 appointment of a guardian of the estate.

31 D. The power to give necessary consent to enable the
32 ward to receive necessary medical or other professional care.
33 Exceptions to consent to medical care under parts 9525.3055 to
34 9525.3060 apply. This power includes consent to aversive and
35 deprivation procedures under part 9525.3045 and psychotropic

1 medications under part 9525.3050.

2 E. The power to approve or withhold approval of any
3 contract the ward makes, except for necessities.

4 F. The duty and power to exercise supervisory
5 authority over the ward in a manner that limits civil rights and
6 restricts personal freedom only to the extent necessary to
7 provide needed care and services.

8 Subp. 2. Additional powers. The county staff acting as
9 public guardian ~~has~~ may have the additional powers granted under
10 Minnesota Statutes, section 252A.111, subdivision 2, if the
11 power is granted by the court. These additional powers are:

12 A. the power to permit or withhold permission for the
13 ward to marry;

14 B. the power to begin legal action or defend against
15 legal action in the name of the ward; and

16 C. the power to consent to the adoption of the ward
17 as provided in Minnesota Statutes, section 259.24.

18 Subp. 3. Special duties. Under Minnesota Statutes,
19 section 252A.111, subdivision 6, the county staff acting
20 as public guardian shall:

21 A. maintain close contact with the ward, visiting at
22 least twice a year;

23 B. determine whether written consent should be given
24 before filming of the ward for public dissemination, after
25 permitting and encouraging input by near relatives of the ward.
26 All filming must depict the ward with dignity and must not be
27 contrary to the best interest of the ward. Consent for filming
28 must include a consideration of the purpose and intended use of
29 the film;

30 C. take actions and make decisions on behalf of the
31 ward that encourage and allow the maximum level of independent
32 functioning in a manner least restrictive of the ward's personal
33 freedom consistent with the need for supervision and protection;
34 and

35 D. permit and encourage maximum self-reliance on the
36 part of the ward and permit and encourage input by the nearest

1 relative of the ward in planning and decision making on behalf
2 of the ward.

3 9525.3045 CONSENT TO USE OF AVERSIVE AND DEPRIVATION PROCEDURES.

4 Subpart 1. **Generally.** The county staff acting as public
5 guardian has the authority to give informed consent for the use
6 of aversive and deprivation procedures. Technical assistance
7 from the department about the use of aversive and deprivation
8 procedures is available to the local agency upon request. The
9 county staff acting as public guardian must withdraw consent at
10 any time that the use of aversive and deprivation procedures do
11 not appear to be in the best interest of the ward.

12 Subp. 2. **Informed consent.** The county staff acting as
13 public guardian must not consent to the use of aversive and
14 deprivation procedures unless all requirements in parts
15 9525.2700 to 9525.2810, Code of Federal Regulations, title 42,
16 section 483.13, and other requirements existing in state and
17 federal law governing the use of such procedures are met.

18 Subp. 3. **Monitoring data.** The county staff acting as
19 public guardian shall monitor the use of aversive and
20 deprivation procedures by reviewing data required under parts
21 9525.2700 to 9525.2810 and Code of Federal Regulations, title
22 42, section 483.13, to determine whether continued use of
23 aversive or deprivation procedures is consistent with these
24 requirements and is in the best interest of the ward.
25 Documentation of this review must be included in the quarterly
26 review required under part 9525.3065, subpart 2.

27 9525.3050 CONSENT TO USE OF PSYCHOTROPIC MEDICATIONS.

28 Subpart 1. **Generally.** The county staff acting as public
29 guardian has the authority to give informed consent for the use
30 of psychotropic medications for the ward. The informed consent
31 must be in writing. Technical assistance from the department
32 about the use of psychotropic medications is available to the
33 local agency upon request. The county staff acting as public
34 guardian ~~staff~~ must withdraw consent at any time that the use of
35 psychotropic medication does not appear to be in the best

1 interest of the ward.

2 Subp. 2. **Informed consent.** The county staff acting as
3 public guardian must not consent to the use of psychotropic
4 medications, unless the following information is documented and
5 reviewed by the local agency:

6 A. the target behavior or condition for which the
7 psychotropic medication is to be used;

8 B. a description of the target behavior or condition
9 in specific observable and measurable terms;

10 C. the current rate, intensity, and quantification of
11 the target behavior or condition;

12 D. the expected benefits including the level to which
13 the psychotropic medication is to change the target behavior or
14 condition;

15 E. the other therapies and programs available and
16 which have been considered, or tried and rejected, and the
17 rationale for selecting psychotropic medications as opposed to
18 alternative therapies or programs; and

19 F. specific information about the psychotropic
20 medication to be used including:

21 (1) the generic and commonly known brand name;

22 (2) the proposed dose;

23 (3) the possible dosage range ~~and~~ or maximum
24 dosage;

25 (4) the route of administration;

26 (5) the estimated duration of therapy; and

27 (6) the risks and possible side effects of the
28 psychotropic medication, including the manner in which the
29 ~~deleterious~~ side effects may be ~~alleviated~~ managed.

30 Consent for psychotropic medication may be withdrawn at any
31 time and automatically expires one year from the date of consent
32 unless consent is renewed or a shorter time is agreed upon by
33 the county staff acting as public guardian.

34 Subp. 3. **Monitoring side effects.** The county staff acting
35 as public guardian must not consent to the use of a psychotropic
36 medication, unless standardized methods for assessing and

1 monitoring side effects are in place. This must include a
 2 standardized side effects scale. In addition, when
 3 antipsychotic medication or amoxapine is used, the Dyskinesia
 4 Identification System: Condensed User Scale (DISCUS) and
 5 Monitoring-of-Side-Effects-Scale-(MOSES)-evaluation-tools
 6 are must be used to monitor for tardive dyskinesia (TD) and a
 7 method must be in place for-the-monitoring-of to monitor for
 8 other extrapyramidal system side effects, including tardive
 9 dyskinesia-(TD)-and akathisia, dystonia, and
 10 pseudoparkinsonism. For purposes of this subpart, the following
 11 terms have the meaning given them.

12 A. "Tardive dyskinesia" means a variable combination
 13 of abnormal involuntary movements associated with the use,
 14 usually one to two years or more, of antipsychotic medication
 15 such-as-thioridazine, haloperidol, and thiothixene.

16 B. "Akathisia" means a syndrome characterized by an
 17 inability to remain in a sitting posture, with motor
 18 restlessness and a feeling of muscular quivering. This syndrome
 19 may appear as a complication of therapy with antipsychotic
 20 medication such as phenothiazines or reserpine. "Extrapyramidal
 21 system side effects" means signs and symptoms associated with
 22 antipsychotic medication, including:

23 (1) akathisia: the inability to sit still,
 24 restlessness, pacing, walking in place, or complaints of
 25 jitteriness, jumpiness, or feeling like jumping out of one's
 26 skin;

27 (2) pseudoparkinsonism: tremors, drooling, lack
 28 of movement, or shuffling gait; and

29 (3) dystonia: rigidity, eyes rolled up, or
 30 arched back.

31 C. "Dyskinesia Identification System: Condensed User
 32 Scale" or "DISCUS" means an a 15-item assessment scale which
 33 monitors tardive dyskinesia by measuring the presence of
 34 involuntary movements in the following areas of the body: The
 35 DISCUS is incorporated by reference. The DISCUS was published
 36 in the Psychopharmacology Bulletin, volume 27 (1991), pages 51

1 to 58, and is not subject to frequent change. DISCUS forms are
 2 available from the State Law Library, or from the department
 3 upon request.

4 ~~(1)-face;~~

5 ~~(2)-eyes;~~

6 ~~(3)-oral;~~

7 ~~(4)-lingual;~~

8 ~~(5)-head,-neck,-and-trunk;~~

9 ~~(6)-upper-limb,-and~~

10 ~~(7)-lower-limb.~~

11 D. "Monitoring-of-Side-Effects Standardized side
 12 effects assessment scale" or "MOSES" means an a published or
 13 professionally developed assessment scale which monitors general
 14 side effects in-the-following-areas-of-the-body.

15 ~~(1)-eyes,-ears,-and-head;~~

16 ~~(2)-mouth;~~

17 ~~(3)-nose,-throat,-and-chest;~~

18 ~~(4)-gastrointestinal;~~

19 ~~(5)-musculoskeletal-and-neurological;~~

20 ~~(6)-skin;~~

21 ~~(7)-urinary-and-genital,-and~~

22 ~~(8)-psychological.~~

23 Subp. 4. Monitoring schedules. In addition to the
 24 requirements of subpart 3, the county staff acting as public
 25 guardian must not consent to the use of psychotropic
 26 medications, unless there is documentation that the following
 27 monitoring criteria are in place:

28 A. the monitoring of side effects is documented at
 29 least once, seven to 14 days after the initiation or dosage
 30 increase of any psychotropic medication, with the exception of
 31 the following documented and justified clinical situations:

32 (1) the medication is prescribed for use in
 33 emergency situations (stat.);

34 (2) the medication is prescribed on an as-needed
 35 basis (p.r.n.) for five days or less;

36 (3) acute use or increase of a medication to

1 control a problem for up to 14 days, at which time the dosage is
 2 decreased to the prior level;

3 (4) an increase to a prior dosage following a
 4 failure at a lower dosage as a part of a minimal effective
 5 dosage attempt; and

6 (5) a gradual upward titration.

7 In cases of upward titration, an initial seven- to 14-day
 8 assessment and monthly assessments are required until the dosage
 9 is stabilized;

10 B. the monitoring of side effects is documented at
 11 least once every six months if any psychotropic medication
 12 continues to be prescribed; and

13 C. the monitoring of tardive dyskinesia ~~or-tardive,~~
 14 akathisia, and other extrapyramidal system side effects is
 15 documented as occurring at least once every six months
 16 if ~~neuroleptic/amoxapine~~ antipsychotic medication ~~are or~~
 17 amoxapine is prescribed and. Monitoring must also occur at
 18 least once per year if ~~neuroleptic/amoxapine~~ antipsychotic
 19 medication ~~are-not~~ amoxapine is no longer prescribed but
 20 tardive dyskinesia ~~or,~~ tardive akathisia, or tardive dystonia is
 21 diagnosed. The county staff acting as public guardian must
 22 withdraw consent to the use of psychotropic medications at any
 23 time the conditions under this subpart are not met.

24 Subp. 5. Data review of target behavior. The county staff
 25 acting as public guardian must not consent to the use of
 26 psychotropic medications, unless there is in place a method ~~for~~
 27 ~~collecting~~ to collect and review data on the incidence of the
 28 behavior that the psychotropic medication is to increase ~~and,~~
 29 decrease, or eliminate and which provides a basis to determine
 30 the effectiveness of the psychotropic medication. This data
 31 collection method must include:

32 A. an objective description of the target behaviors
 33 to be increased and decreased or eliminated;

34 B. the ~~data-collection-method~~ methodology of
 35 collecting data on target behaviors;

36 C. the target behavior criterion level which

1 represents treatment effectiveness;

2 D. quantification of the target behaviors to be
3 increased and decreased or eliminated based upon data collected
4 since the last review;

5 E. any current behavioral or therapeutic programs
6 assigned to the target behaviors and the effectiveness of those
7 programs;

8 F. the psychotropic medication, dose, and route of
9 administration before and after the review;

10 G. the date for the next review; and

11 H. the data review must occur:

12 (1) at least once per month for at least one
13 month after any psychotropic medication initiation;

14 (2) at least once per month for at least one
15 month after any psychotropic medication dosage adjustment; and

16 (3) at least once every three months if the
17 psychotropic medication and dose are stabilized.

18 At least once per year, the data review must include a
19 gradual minimal effective dosage attempt or must justify why the
20 reduction is not possible.

21 9525.3055 NONDELEGATED CONSENT.

22 Subpart 1. Generally. The ~~commissioner~~ department retains
23 the authority to provide consent in the areas described in this
24 part. ~~Local-agencies~~ County staff acting as public guardians do
25 not have authority to grant consent under subparts 2 to 4.

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

34 A. that the county staff acting as public guardian
35 has visited the ward;

1 B. that the ward has been informed of the reasons and
2 consequences of the order, and to the extent the ward is able to
3 comprehend, the ward agrees to the order;

4 C. that the county staff acting as public guardian
5 has made reasonable efforts to obtain the opinion of the nearest
6 relative;

7 D. that the physician's written recommendation
8 includes:

9 (1) a statement indicating whether the "do not
10 resuscitate" order is appropriate;

11 (2) a statement of the ward's physical condition
12 including current physical and adaptive skills, the terminal
13 condition, and deterioration that has occurred since the onset
14 of the terminal condition;

15 (3) a statement that death is imminent or that
16 initiating cardiopulmonary resuscitation would be medically
17 futile or would harm the ward. For purposes of this part, death
18 occurring within one year is considered imminent; and

19 (4) a statement of the ward's prognosis given the
20 terminal condition or medically futile condition;

21 E. a statement that the request for the order is not
22 based on discrimination because of the ward's mental
23 retardation;

24 F. upon request by the department, a report from a
25 biomedical ethics committee, if one exists within the health
26 care institution, that affirms that the proper procedures have
27 been followed by the health care providers on behalf of the
28 ward; and

29 G. a recommendation by the county staff acting as
30 public guardian for or against the request.

31 Subp. 3. Limited medical treatment. The county staff
32 acting as public guardian shall submit an application to the
33 department for written approval. The standards in subpart 2
34 govern the application for limited medical treatment. For
35 purposes of this part, limited medical treatment means a
36 life-sustaining treatment that has been deemed through ethical

1 decision making, to be useless or gravely burdensome to the ward.

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

- 10 A. an explanation of the purposes of the research;
- 11 B. the expected duration of the ward's participation;
- 12 C. a description of the procedures to be followed;
- 13 D. identification of any procedures which are
14 experimental;
- 15 E. a description of any reasonably foreseeable risks
16 or discomforts to the ward;
- 17 F. a description of any benefits to the ward or to
18 others which may reasonably be expected from the research;
- 19 G. a description of appropriate alternative
20 procedures or course of treatment, if any, that might be
21 advantageous to the ward;
- 22 H. a statement that describes the extent, if any, to
23 which the confidentiality of records that identify the ward will
24 be maintained ~~and-that-notes-that-the-Food-and-Drug~~
25 ~~Administration-may-inspect-the-records;~~
- 26 I. for research involving more than minimal risk, an
27 explanation about whether any compensation is available, and an
28 explanation about whether medical treatments are available if
29 injury occurs and, if so, what they consist of or where further
30 information may be obtained;
- 31 J. an explanation of ~~who~~ whom to contact for answers
32 to questions about the research and the ward's rights, and ~~who~~
33 whom to contact in the event of a research-related injury to the
34 ward; ~~and~~
- 35 K. a statement that participation is voluntary, that
36 refusal to participate will involve no penalty or loss of

1 benefits to which the ward is otherwise entitled, and that the
2 ward may discontinue participation at any time without penalty
3 or loss of benefits; and

4 L. the additional elements of informed consent as
5 required under Code of Federal Regulations, title 45, section
6 46.116(b), must also be included in the application for informed
7 consent, when relevant.

8 Subp. 5. Temporary care placement. The county staff
9 acting as public guardian shall request the department's written
10 approval for a ward's temporary placement at a regional center.
11 A ward's admission to a regional center for the purpose of
12 receiving temporary care must not exceed 90 calendar days in any
13 calendar year. The number of days of temporary care needed must
14 be specified at the time of the ward's admission. The request
15 must include a plan for establishment of a community placement
16 for the ward within 90 calendar days of the date of temporary
17 placement.

18 9525.3060 NONDELEGATED CONSENT REQUIRING A COURT ORDER.

19 Subpart 1. Generally. No guardian may give consent for
20 psychosurgery, electroconvulsive therapy, sterilization, or
21 experimental treatment of any kind, unless the procedure is
22 first approved by order of the court. Under Minnesota Statutes,
23 section 525.56, subdivision 3, the court determines if the
24 procedure is in the best interest of the ward. A petition for a
25 court order for nondelegated consent is governed by Minnesota
26 Statutes, section 525.56, subdivision 3, paragraph (4), clause
27 (b). Before the court hearing, the county staff acting as
28 public guardian shall obtain the written recommendation of the
29 department pursuant to Minnesota Statutes, chapter 252A.

30 Subp. 2. Sterilization. The county staff acting as public
31 guardian shall make application to the department for a written
32 recommendation regarding sterilization of a ward. The
33 application must include those reports prepared by a licensed
34 physician, a psychologist who is qualified in the diagnosis and
35 treatment of mental retardation, and a social worker who is

1 familiar with the ward's social history and adjustment or the
2 case manager for the ward, as required by Minnesota Statutes,
3 section 525.56, subdivision 3, paragraph (4), clause (c). These
4 reports must include the following:

5 A. why sterilization is being proposed;

6 B. whether sterilization is necessary and is the
7 least intrusive method for alleviating the problem presented;

8 C. whether sterilization is in the best interest of
9 the ward; and

10 D. medical reports specifically considering the
11 medical risks of sterilization, the consequences of not
12 performing the sterilization, and whether alternative methods of
13 contraception could be used to protect the best interest of the
14 ward.

15 Subp. 3. **Department recommendation.** The department must
16 not recommend sterilization of a ward, unless the following
17 conditions have been met:

18 A. the ward has engaged in sexual intercourse or it
19 is reasonably likely that the ward will engage in sexual
20 intercourse;

21 B. all alternative methods of contraception, medical
22 intervention, and behavior modification have been considered or
23 have been tried unsuccessfully, including the use of
24 contraceptives by the partner;

25 C. the physician has submitted a written statement
26 that the proposed surgical procedure presents no undue risk for
27 the ward; and

28 D. the ward has been fully informed and has agreed to
29 the procedure, to the extent that the ward can comprehend the
30 procedure and the reasons for it.

31 Subp. 4. **Electroconvulsive therapy, psychosurgery, and**
32 **experimental treatment.** Under Minnesota Statutes, section
33 525.56, subdivision 3, paragraph (4), clause (a), no ward may
34 receive electroconvulsive therapy, psychosurgery, or
35 experimental treatment of any kind, unless the court orders the
36 treatment. The county staff acting as public guardian shall

1 make application to the department for a written recommendation
2 before petitioning the court. The application must contain
3 documentation that the following conditions have been met:

4 A. the drug, therapy, or treatment is intended to
5 treat a serious or life-threatening disease, pathological
6 condition, or behavioral pattern;

7 B. more accepted methods have been tried and found to
8 be ineffective;

9 C. there is not a comparable or satisfactory
10 alternative drug, therapy, or treatment available that is
11 approved or generally recognized in the treatment of the
12 disease, pathological condition, or behavior; and

13 D. that the county staff acting as public guardian
14 has:

15 (1) visited the ward to observe the condition;

16 (2) informed the ward of the procedure, the
17 potential risks, and the reasons for the procedure in a manner
18 the ward can comprehend;

19 (3) obtained the opinion of the nearest relative,
20 to the extent possible;

21 (4) described the ward's current physical
22 condition in the application;

23 (5) described the effect of previous medical
24 interventions in the application;

25 (6) obtained a physician's recommendation; and

26 (7) made a recommendation for or against the
27 procedure.

28 9525.3065 MONITORING AND EVALUATION.

29 Subpart 1. Annual review. Under Minnesota Statutes,
30 section 252A.16, the county staff acting as public guardian
31 shall conduct an annual review of the status of each ward. The
32 county staff acting as public guardian shall submit to the
33 department by the annual birthday of each ward, a copy of the
34 annual review for each ward receiving public guardianship
35 services during the past calendar year. The annual review must

1 be in writing in the form determined by the local agency and
2 must minimally include a description of the ward's:

- 3 A. physical adjustment and progress;
- 4 B. mental adjustment and progress;
- 5 C. social adjustment and progress; and
- 6 D. legal status based on items A to C.

7 The annual review required under parts 9525.0015 to
8 9525.0165 may be used to fulfill the annual review requirement
9 of this subpart only when that review contains all of the
10 criteria required under items A to D. The county staff acting
11 as public guardian must review and sign all annual reviews.

12 If the county staff acting as public guardian determines
13 that the ward is no longer in need of guardianship or is capable
14 of functioning under a less restrictive conservatorship, the
15 local agency shall petition the court for a termination or
16 modification of public guardianship as specified in part
17 9525.3085.

18 Subp. 2. **Quarterly review of records.** Under Minnesota
19 Statutes, section 252A.21, subdivision 2, the county staff
20 acting as public guardian shall review the records from the day,
21 residential, and any support services on a quarterly basis. The
22 quarterly review of records must be in writing in the form
23 determined by the local agency. The quarterly review must
24 contain any data about the use of aversive and deprivation
25 procedures under part 9525.3045 and psychotropic medications
26 under part 9525.3050. In conducting the quarterly review, the
27 county staff acting as public guardian shall indicate in writing
28 whether:

- 29 A. the ward is satisfied with the services;
- 30 B. the services are in the best interest of the ward;
- 31 C. the services are being provided according to the
32 ward's individual service plan; and
- 33 D. the services continue to meet the needs of the
34 ward in the least restrictive environment.

35 The local agency shall maintain a record of all quarterly
36 reviews according to the local agency's record maintenance

1 schedule and submit copies to the department upon request.

2 Subp. 3. **Additional reports.** The county staff acting as
3 public guardian shall provide additional reports as requested by
4 the department.

5 9525.3070 COUNTY OF GUARDIANSHIP RESPONSIBILITY.

6 Subpart 1. **Responsibilities delegated to county of**
7 **guardianship responsibility.** All guardianship responsibilities
8 in parts 9525.3010 to 9525.3100, are delegated by the
9 commissioner to the county of guardianship responsibility except
10 for those responsibilities retained by the commissioner under
11 parts 9525.3055 to 9525.3060. The county of guardianship
12 responsibility retains general supervisory responsibility for
13 the ward throughout the duration of the public guardianship.

14 Subp. 2. **Maintenance of records.** The county of
15 guardianship responsibility shall maintain a record for each
16 ward. A separate guardianship record is not required. The
17 guardianship record may be part of the existing client record.
18 The county of guardianship responsibility, and any designated
19 supervising agency, shall retain records on a ward until a court
20 order terminates the guardianship or until the death of the ward.
21 Records of a person previously under public guardianship may be
22 destroyed four years from the date the file is closed.

23 Subp. 3. **Ward relocation.** The county staff acting as
24 public guardian shall notify the department when a ward
25 permanently relocates or temporarily leaves Minnesota for an
26 extended stay. Notification is required for the following:

27 A. Leaving the state for more than 90 days. The
28 county staff acting as public guardian shall determine whether
29 leaving the state more than 90 days is in the best interest of
30 the ward. If necessary, the county staff acting as public
31 guardian shall refer the ward to the appropriate local agency in
32 the other state for ongoing supervision.

33 B. Moving permanently from Minnesota. The county
34 staff acting as public guardian shall determine whether moving
35 permanently from the state is in the best interest of the ward.

1 When a determination is made that the ward will move, the local
2 agency shall seek termination of the public guardianship
3 according to part 9525.3085.

4 9525.3075 SUPERVISING AGENCY.

5 Subpart 1. Referral. When a ward moves or plans to move
6 to another county, the county of guardianship responsibility may
7 refer the ward to the county where the person is living, or
8 plans to live, with a request for fulfilling the powers and
9 duties of guardianship.

10 Subp. 2. Transfer of responsibility. All or any portion
11 of the powers and duties that have been delegated by the
12 ~~commissioner~~ department to the county of guardianship
13 responsibility may be transferred to the county of supervisory
14 responsibility by written agreement between the two local
15 agencies. Upon entering into a written agreement with the
16 county of guardianship responsibility, the supervising agency is
17 responsible for the ward. The county of guardianship
18 responsibility shall notify the department of all transfers of
19 responsibilities by submitting a copy of the written agreement
20 to the department within 30 calendar days of the effective date
21 of the agreement.

22 Subp. 3. Transfer of venue. The county of guardianship
23 responsibility may be changed by the court through a transfer of
24 venue according to Minnesota Statutes, section 525.57.

25 9525.3080 COUNTY CONTRACTING FOR PUBLIC GUARDIANSHIP SERVICES.

26 Local agencies may contract ~~with-a-public-or-private-agency~~
27 ~~or-individual-who-is-not-a-service-provider-for-the-person~~ only
28 for the public guardianship representation required by the
29 screening and the individual service ~~and-program~~ planning
30 process. Local agencies may contract for these services with a
31 public or private agency or individual who is not a service
32 provider for the person. Local agencies must not contract with
33 any party for the provision of other public guardianship duties
34 required under parts 9525.3010 to 9525.3100.

1 9525.3085 MODIFICATION OR TERMINATION OF PUBLIC GUARDIANSHIP.

2 Subpart 1. Generally. A hearing for the modification or
3 termination of a public guardianship is governed by Minnesota
4 Statutes, section 252A.19. The commissioner serves as public
5 guardian with all the powers awarded pursuant to the
6 guardianship until termination or modification by the court.

7 Subp. 2. Petition. The commissioner, ward, county staff
8 acting as public guardian, or any interested person may petition
9 the appointing court or the court to which venue has been
10 transferred, for an order to terminate or modify the public
11 guardianship under Minnesota Statutes, section 252A.19,
12 subdivision 2. If the local agency determines that the ward no
13 longer needs public guardianship, the local agency shall
14 petition the court for a termination or modification of the
15 public guardianship under Minnesota Statutes, section 252A.19.

16 Subp. 3. Specific modifications. The specific forms of
17 modification available are set forth in Minnesota Statutes,
18 section 252A.19, subdivision 2. Each of these alternatives is a
19 change in legal status of the ward and requires a court hearing.

20 Subp. 4. Comprehensive evaluation. The county staff
21 acting as public guardian shall arrange for a comprehensive
22 evaluation of the ward at the court's request, under Minnesota
23 Statutes, section 252A.19, subdivision 4.

24 9525.3090 DEATH OF A WARD OR CONSERVATEE.

25 Subpart 1. Report. The county staff acting as public
26 guardian shall report the death of a ward to the department and
27 to the court that appointed the guardian, within 14 calendar
28 days of the date of death. The written report must state the
29 date, time, place, and cause of death. If a vulnerable adult
30 investigation is conducted under Minnesota Statutes, section
31 626.557, a final report must be submitted to the department when
32 the investigation is completed.

33 Subp. 2. Closing of local agency record. Upon the death
34 of a ward and notification of the department, the guardianship
35 record may be closed.

1 Subp. 3. Termination of guardianship. Under Minnesota
2 Statutes, section 525.60, the guardianship of an adult ward
3 terminates upon death.

4 9525.3095 GUARDIANSHIP TRAINING.

5 The local agency shall establish a plan for the training of
6 all county staff acting as public guardians. The plan must
7 include at least ten hours of training annually in the areas of
8 guardianship and or mental retardation. Training and
9 development sessions attended by county staff acting as public
10 guardians must be documented and kept on file at the local
11 agency.

12 9525.3100 REVIEW OF PUBLIC GUARDIANSHIP MATTERS.

13 Subpart 1. Informal review. Informal review by the
14 department of matters pertaining to public guardianship services
15 is available upon request. Interested persons may request a
16 review by submitting a written request directly to the
17 guardianship-unit department. A review by the guardianship-unit
18 department is not considered an appeal under Minnesota Statutes,
19 ~~section 256.045, because section 256.045 does not apply to~~
20 ~~guardianship-matters~~. An informal review does not preclude any
21 appeal rights available under Minnesota Statutes, sections
22 525.71 to 525.731.

23 Subp. 2. De novo review. The commissioner, ward, or any
24 interested person may petition the appointing court or the court
25 to which venue has been transferred to review de novo any
26 decision made by the county staff acting as public guardian or
27 the department staff acting as public guardian, on behalf of a
28 ward according to Minnesota Statutes, section 252A.19,
29 subdivision 2.

30 Subp. 3. Appeals. Appeals from an order of public
31 guardianship are governed by Minnesota Statutes, section
32 252A.21, subdivision 1.