

[N.J.A.C. 10:43](#)

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 56 No. 3, February 5, 2024

NJ - New Jersey Administrative Code > TITLE 10. HUMAN SERVICES > CHAPTER 43. GUARDIANSHIP: NEED, APPOINTMENT, CONTINUITY

Title 10, Chapter 43 -- Chapter Notes

Statutory Authority

CHAPTER AUTHORITY:

[N.J.S.A. 30:1-12](#) and [30:4-165.4](#) et seq.

History

CHAPTER SOURCE AND EFFECTIVE DATE:

R.2022 d.129, effective August 26, 2022.

See: [54 N.J.R. 858\(a\)](#), [54 N.J.R. 1914\(a\)](#).

CHAPTER HISTORICAL NOTE:

Chapter 43, Determination of Need for a Guardian, was filed and became effective prior to September 1, 1969.

Pursuant to Executive Order No. 66(1978), Chapter 43, Determination of Need for a Guardian, was readopted as R.1983 d.390, effective September 1, 1983. See: 15 N.J.R. 1111(a), 15 N.J.R. 1581(a).

Chapter 43, Determination of Need for a Guardian, was repealed and Chapter 43, Determination of Need for a Guardian, was adopted as new rules by R.1989 d.430, effective August 21, 1989. See: 20 N.J.R. 2850(a), 21 N.J.R. 2501(a). Pursuant to Executive Order No. 66(1978), Chapter 43 expired on August 21, 1994.

Chapter 43, Determination of Need for a Guardian, was adopted as new rules by R.1994 d.611, effective December 19, 1994. See: 26 N.J.R. 2838(a), 26 N.J.R. 3341(a), 26 N.J.R. 5020(a). Pursuant to Executive Order No. 66(1978), Chapter 43 expired on December 19, 1999.

Chapter 43, Determination of Need for a Guardian, was adopted as new rules by R.2000 d.131, effective March 20, 2000. See: [31 N.J.R. 3957\(a\)](#), [32 N.J.R. 1017\(a\)](#). Chapter 43, Determination for Need of a Guardian, expired on March 20, 2005.

Chapter 43, Guardianship: Need, Appointment, Continuity, was adopted as new rules by R.2008 d.107, effective May 5, 2008. See : [39 N.J.R. 1382\(a\)](#), [40 N.J.R. 2270\(c\)](#).

Subchapter 3, Guidelines for Guardianship Assessment, was renamed Petition for Guardianship by R.2010 d.280, effective December 6, 2010. See: [42 N.J.R. 1288\(a\)](#), [42 N.J.R. 2954\(b\)](#).

Title 10, Chapter 43 -- Chapter Notes

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 43, Guardianship: Need, Appointment, Continuity, was scheduled to expire on May 5, 2015. See: [43 N.J.R. 1203\(a\)](#).

Chapter 43, Guardianship: Need, Appointment, Continuity, was readopted, effective April 5, 2015. See: [47 N.J.R. 896\(a\)](#).

Chapter 43, Guardianship: Need, Appointment, Continuity, was readopted as R.2022 d.129, effective August 26, 2022. See: Source and Effective Date.

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Research References & Practice Aids

CHAPTER EXPIRATION DATE:

Chapter 43, Guardianship: Need, Appointment, Continuity, expires on August 26, 2029.

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[N.J.A.C. 10:43-1.1](#)

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§ 10:43-1.1 Philosophy

(a) In addressing the issue of an individual's potential need for a guardian, the Division shall acknowledge and take into account the following considerations:

1. An adult individual with developmental disabilities may or may not require appointment of a guardian to act on his or her behalf. A conclusion that a guardian is required shall be founded upon a sound clinical basis and shall be regularly reviewed, in accordance with [N.J.A.C. 10:43-8.1](#);
2. Guardianship is the removal of a person's fundamental right of self-determination and, therefore, shall be a solution of last resort. The staff of the Division of Developmental Disabilities shall make efforts to seek solutions that are the least restrictive and intrusive to a person's liberty and that preserve to the maximum extent possible the individual's autonomy while providing the needed protections. Restricting a person's decision-making authority shall be limited to only those areas in which the person has demonstrated a lack of capacity as determined by a clinical assessment;
3. The ability to make decisions depends upon the complexity of the decisions to be made and the potential consequences of those decisions. All decisions are not complex, nor are all decisions simple. Most of the daily decisions that people make do not require a high degree of abstract thinking. They are about making everyday choices that relate to their immediate needs;
4. Decision-making is a continuum of reasoning ability from a simple preference to a choice between alternatives (often defined by others) to weighing pros and cons, risks and benefits and anticipating possible consequences. A person moves back and forth along this continuum relative to the demands of the decision to be made;
5. Restricting a person's right to make decisions also may restrict the opportunities to develop decision-making skills. The ability to choose is expressed in many ways. It is a skill that is difficult to acquire without practice and difficult to express without opportunity. In order for an individual to learn to make decisions, he or she needs real opportunities to make decisions with real consequences. Taking away a person's right to make decisions further limits that person's opportunity to acquire decision-making skills;
6. Decisions may be expressed by verbal or non-verbal language, written communication or behavioral action; and
7. Guardianship is not appropriate for those individuals who are deemed capable of making and expressing all of their own decisions. Limited guardianship is appropriate for those individuals who are deemed capable of making and expressing some, but not all, decisions. General guardianship is appropriate only for those individuals who are deemed incapable of making or expressing any decisions.

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§ 10:43-1.2 Authority

- (a) Pursuant to [N.J.S.A. 30:4-165.1](#), the Commissioner of the Department of Human Services shall provide comprehensive services, in order that eligible persons with developmental disabilities may be provided with adequate training, care and protection.
- (b) Pursuant to [N.J.S.A. 30:4-165.5](#), the Commissioner of the Department of Human Services shall evaluate each minor admitted to Division services provided by the Division of Developmental Disabilities as he or she approaches adulthood to assess the potential need for a guardian on attainment of his or her age of majority.
- (c) The Commissioner is also required pursuant to [N.J.S.A. 30:4-165.5](#), to ascertain whether individuals, who are already 18 years old at the time of their admission into services, are in need of a guardian.
- (d) Pursuant to [N.J.S.A. 30:4-165.7](#), the Commissioner or any parent, spouse, relative, or interested party, on behalf of a person assessed to be in need of a guardian who is receiving Division services and is over 18 years of age, may file a complaint with the Superior Court for a judgment appointing a guardian.
- (e) Pursuant to [N.J.S.A. 30:4-165.12](#), the Commissioner can only serve as guardian of the person. The Commissioner shall file a complaint for guardianship of the person only and not for guardianship of property on behalf of an individual receiving Division services.

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§ 10:43-1.3 Definitions

The following words and terms shall, for the purposes of this chapter, have the meanings contained in this section unless the text clearly indicates otherwise:

"Adaptive functioning" means the effectiveness or degree with which the individual meets the standards of personal independence and social responsibility expected of his or her age and cultural group measured by a standardized assessment.

"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 decisions to be made. An individual may have capacity for decision-making in some areas of life, but not for others, or for some decisions within an area of life, but not all.

"Caregiver" includes, but is not limited to, direct support professional, direct care staff and home health aides.

"Choice" means reasoning ability in which a selection of alternatives (either/or) is made, based upon a subjective feeling, relating to an immediate need. Others may define the alternatives.

"Clear and convincing evidence" is a legal standard that means evidence that is so clear, direct, weighty and convincing as to establish, without hesitancy, the precise facts in issue.

"Clinical assessment" means a comprehensive evaluation of a person's decision-making abilities and need for guardianship that meets the standards in [N.J.A.C. 10:43-3.3](#).

"Clinical interview" means an interview, conducted by a clinician, with the alleged incapacitated person that focuses on the person's rights, needs, strengths, abilities and history of opportunities for decision-making and problem-solving.

"Clinician" means a physician licensed to practice pursuant to [N.J.S.A. 45:9-1](#) et seq., a psychologist licensed to practice pursuant to [N.J.S.A. 45:14B-2](#) et seq. or a person employed by the Division of Developmental Disabilities pursuant to [N.J.S.A. 45:14B-2](#) et seq.

"Closely related person" means such individuals with or without legal or genetic relationship, shared household or familial affiliation known to the Division as being involved and interested in the welfare and best interests of the individual receiving services.

"Cognitive functioning" describes a person's general mental abilities to acquire knowledge as defined by individually administered standardized intelligence tests (IQ or IQ equivalent).

§ 10:43-1.3 Definitions

"Collateral interview" means any interview with family, supportive personnel, caregivers and friends that focuses on the alleged incapacitated person's experiences and opportunities for decision-making. The data provides comparison on skills performed in different environments and varying perspectives of the interviewees.

"Commissioner" means the Commissioner of the Department of Human Services.

"Decision" means the act of reaching a conclusion or making-up one's mind through a process of selecting among options.

"Developmental disability" means a severe, chronic disability as defined in [N.J.A.C. 10:46-1.3](#).

"Division" means the Division of Developmental Disabilities.

"Division services" means those services and programs in the Division that are available to provide persons with developmental disabilities with education, training, rehabilitation, adjustment, treatment, care and protection. Services include, but are not limited to, residential care, case management, social supervision, and day programming.

"Education" means all activities and programs conducted for the purpose of acquiring knowledge or a skill, such as through a school or an adult class.

"Family" means spouse, domestic partner as defined in P.L. 2003, c. 246 ([N.J.S.A. 26:8A-3](#)), children, parents and siblings of the individual alleged to be in need of a guardian.

"General guardian" means an individual or agency appointed by a court of competent jurisdiction to make all decisions in a person's life pursuant to [N.J.S.A. 3B:12-12\(a\)](#).

"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 assure 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.

"Guardianship assessment report" means a comprehensive report that includes clinical data and an integration of findings and provides clear and convincing evidence by example to support the conclusion as to the need for guardianship that meets the requirements of [N.J.A.C. 10:43-3.4](#).

"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.

"Heirs" means those persons, including, but not limited to, the surviving spouse, the domestic partner and the descendants of the decedent, who are entitled, under the statutes of intestate succession, to the property of a decedent.

"Incapacitated individual" has the same meaning as set forth in [N.J.S.A. 3B:1-2](#).

"Initial screening" means a review by the Intake Team or the Interdisciplinary Team to ascertain whether or not it appears that a guardian may be needed. The screening is cursory and does not include a Clinical Assessment.

"Intake Team" means at least two staff, one of whom is the intake worker and one who is a psychologist, who are responsible for determining that the eligibility criteria contained in [N.J.A.C. 10:46](#) have been met.

"Integration of findings" means a compilation of data gathered from clinical interviews, collateral interviews and standardized tests that is interpreted by the clinician and states a conclusion.

§ 10:43-1.3 Definitions

"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.

"Legal matters" means issues affecting an individual's legal rights, including, but not limited to, simple basic contracts, power of attorney, medical power of attorney, last will and testament and participation in a lawyer-client relationship.

"Limited guardian" means an individual or agency who is appointed by a court of competent jurisdiction pursuant to [N.J.S.A. 3B:12-12\(b\)](#), to make only those decisions for which an incapacitated person has been adjudicated to lack capacity.

"Preference" means reasoning ability that is based solely upon a basic like or dislike, or a subjective feeling.

"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.

"Significant chronic functional impairment" means that an individual lacks cognitive and/or adaptive capacities such that his or her ability to make decisions or to communicate, in any way, decisions to others is substantially limited.

"Supportive personnel" includes, but is not limited to, case managers, group home managers, sponsors, program staff, employees, teachers, counselors and/or therapists.

"Temporary guardian" means an individual or agency appointed by a court of competent jurisdiction pursuant to [N.J.S.A. 3B:12-24.1\(c\)](#) to make decisions only for those services determined by the court to be necessary to deal with critical needs or risk of substantial harm to the alleged incapacitated person pending completion of a capacity hearing.

History

HISTORY:

Amended by R.2010 d.280, effective December 6, 2010.

See: [42 N.J.R. 1288\(a\)](#), [42 N.J.R. 2954\(b\)](#).

In definitions "Clinical assessment" and "Guardianship assessment report", updated the N.J.A.C. reference.

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§ 10:43-1.3 Definitions

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§ 10:43-1.4 Scope; applicability

- (a) The provisions of this chapter shall apply to persons who have been admitted to Division services for 30 or more continuous days or who have been determined eligible for such services.
- (b) The Division shall evaluate the need for and initiate action for the appointment of a guardian of the person only.

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§ 10:43-2.1 Initial screening for guardianship need

(a) Upon completion of the intake process and a determination of eligibility for Division services, the Intake Team shall conduct an initial screening to ascertain whether or not it appears that the individual age 17 or older will need a guardian.

1. If the Intake Team concludes that the individual appears to need a guardian, the service component shall forward a referral form with identified proposed guardian or co-guardians to the Chief of BGS.
2. If it appears that the individual will not need a guardian, the Intake Team shall note it in the individual's record. If the service component concludes at a later date that the individual appears to need a guardian, the service component shall forward a referral with identified proposed guardian or co-guardians to the Chief of BGS.

(b) When a minor approaches age 18, or an individual already over the age of 18, is receiving Division services, the service component shall conduct an initial screening to ascertain whether or not it appears that the individual will need a guardian.

1. If the service component concludes that the individual appears to need a guardian, the service component shall forward a referral with identified proposed guardian or co-guardians to the Chief of BGS.
2. If it appears that the individual will not need a guardian, the service component shall note it in the individual's record. If the service component concludes at a later date that the individual appears to need a guardian, the service component shall forward a referral with identified proposed guardian or co-guardians to the Chief of BGS.

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§ 10:43-2.2 (Reserved)

History

HISTORY:

Recodified to [N.J.A.C. 10:43-3.2](#) by R.2010 d.280, effective December 6, 2010.

See: [42 N.J.R. 1288\(a\)](#), [42 N.J.R. 2954\(b\)](#).

Section was "Closely related persons".

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§ 10:43-2.3 (Reserved)

History

HISTORY:

Repealed by R.2010 d.280, effective December 6, 2010.

See: [42 N.J.R. 1288\(a\)](#), [42 N.J.R. 2954\(b\)](#).

Section was "Psychologist's conclusion".

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§ 10:43-3.1 BGS initiates petition

As resources are available, BGS shall prepare a petition for guardianship based on the material forwarded by the Service Component.

History

HISTORY:

New Rule, R.2010 d.280, effective December 6, 2010.

See: [42 N.J.R. 1288\(a\)](#), [42 N.J.R. 2954\(b\)](#).

Former [N.J.A.C. 10:43-3.1](#), Clinical Assessment, recodified to [N.J.A.C. 10:43-3.3](#).

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§ 10:43-3.2 Closely related persons

Proposed guardians are identified pursuant to [N.J.S.A. 3B:12-25](#). On the order of preference, they are the individual's spouse or domestic partner; other heirs; friends; or if none of them are available or able to accept letters of guardianship, or will be to the best interest of the individual; the Chief of the Bureau of Guardianship Services, will propose any other proper person that will accept letters of guardianship. Consideration may be given to surrogate decision makers, if any, chosen by the incapacitated person before the person became incapacitated pursuant to [N.J.S.A. 3B:12-25](#).

History

HISTORY:

Recodified from [N.J.A.C. 10:43-2.2](#) by R.2010 d.280, effective December 6, 2010.

See: [42 N.J.R. 1288\(a\)](#), [42 N.J.R. 2954\(b\)](#).

Former [N.J.A.C. 10:43-3.2](#), Guardianship Assessment Report, recodified to [N.J.A.C. 10:43-3.4](#).

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§ 10:43-3.3 Clinical assessment

- (a) A clinical assessment shall be conducted by a clinician to assess the individual's decision-making abilities and to make a recommendation regarding the need for a guardian.
- (b) The clinical assessment process shall begin with the presumption that the individual has capacity to make all decisions.
- (c) The clinical assessment shall include the following components:
 1. Clinical interview. The clinician shall conduct a clinical interview to attempt to elicit information about the person's life experiences, his or her interpretation of those experiences and what he or she wants for himself or herself in the future, as well as his or her understanding of guardianship. The clinician shall assess both the information and the opportunities that have been afforded to that individual, including decisions the person has made in the past and decisions the individual is currently making. Other factors that may impact upon decision-making include, but are not limited to: severe emotional disturbance, chronic mental disorder, lack of opportunity to make or express decisions. The need for guardianship may be affected by the extent to which these factors interfere with the individual's capacity for self-direction.
 - i. The clinician shall determine the individual's communication style, including, but not limited to, primary language, verbal/non-verbal ability, assistive devices and alternative modes of communication;
 2. Collateral interviews. The clinician shall conduct collateral interviews, to the extent deemed necessary according to his or her professional judgment, with family, friends, supportive personnel and/or caregivers to provide comparison data on skills performed by the individual in different environments. The clinician shall consider the perspective of the interviewees as an important source of information;
 3. Adaptive functioning. The clinician shall either administer a scale of adaptive functioning in accordance with professional standards or review the most recently completed scale of adaptive functioning;
 4. Cognitive functioning. The clinician shall administer, to the extent possible, the appropriate instrument for cognitive functioning in accordance with professional standards and the requirements of the individual being tested, or review the most recently completed instrument for cognitive functioning;
 5. Record review. The clinician shall review all available, relevant portions of the individual's record and other records as provided;
 6. Areas for decision-making. The clinician shall assess the individual's ability to make decisions in areas of life that include, but are not limited to, the following:
 - i. Residence;
 - ii. Employment and/or vocational training;

§ 10:43-3.3 Clinical assessment

- iii. Education;
 - iv. Legal matters; and
 - v. Medical decisions that require informed consent;
7. Rights and responsibilities. The clinician shall assess the individual's understanding of legal rights and obligations at a basic level. The clinician shall also assess the individual's understanding of guardianship; and
8. Recommendation. The clinician shall make a recommendation regarding the need for guardianship based upon the integration of findings. The findings may lead to one of the following recommendations:
- i. The individual does not need a guardian;
 - ii. The individual should be restored to capacity;
 - iii. The individual needs a limited guardian for specific areas of life; or
 - iv. The individual needs a general guardian.

History

HISTORY:

Recodified from [N.J.A.C. 10:43-3.1](#) by and amended R.2010 d.280, effective December 6, 2010.

See: [42 N.J.R. 1288\(a\)](#), [42 N.J.R. 2954\(b\)](#).

Added new (a); and recodified former (a) and (b) as (b) and (c).

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§ 10:43-3.4 Guardianship Assessment Report

- (a) The clinician will prepare a Guardianship Assessment Report to document the findings of the clinical assessment and recommendations.
- (b) The Guardianship Assessment Report shall include the following:
1. A background summary obtained from the record review and personal interviews with family and/or caregivers and the clinical interview;
 2. A physical description of the person, including height and weight, per *New Jersey Court Rules R. 4:86-2(b)*;
 3. A balanced picture of the person's strengths and weaknesses including, but not limited to, self-care, food, clothing, leisure activities and social and interpersonal relationships;
 4. A description of other medical disabilities and their impact upon decision-making;
 5. Evidence/examples of decision-making capacity for each identified area, where possible;
 6. Clear and convincing evidence, by way of examples, to support any recommendation of general, limited or continued guardianship;
 7. Identification of those areas of decision-making for which the individual lacks capacity and needs the appointment of a guardian;
 8. The communication style including, but not limited to, primary language, verbal/nonverbal ability, assistive devices and alternative modes of communication;
 9. A recommendation as to whether the individual does not need a guardian, or whether the individual needs a restoration to capacity, or a limited guardian of the person or a general guardian of the person; and
 10. A time frame for review, if required, by case circumstances.

History

HISTORY:

Recodified from [N.J.A.C. 10:43-3.2](#) by R.2010 d.280, effective December 6, 2010.

See: [42 N.J.R. 1288\(a\)](#), [42 N.J.R. 2954\(b\)](#).

Added new (a); and recodified former (a) as (b).

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§ 10:43-4.1 General or limited guardian

- (a) Once BGS has gathered information about potential guardians and obtained the Guardianship Assessment Report, BGS shall secure certifications attesting to the need for appointment of a guardian signed by the administrative head of the service component unit and the clinician who assessed the individual. BGS shall also prepare appropriate certifications pertinent to the proposed guardian.
- (b) Upon receipt of the completed certifications pursuant to (a) above, the Chief, Bureau of Guardianship Services, shall review material for completeness, in accordance with [N.J.S.A. 30:4-165.5](#), sign a verified complaint and refer the matter to the Division of Law for the purpose of bringing a guardianship action to court pursuant to [R. 4:86-10](#) of the Rules governing the Courts of the State of New Jersey.
- (c) Once a guardianship judgment is signed by the court, the Office of the Attorney General will forward it to the appointed guardian(s) and the Bureau of Guardianship Services.

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[N.J.A.C. 10:43-4.2](#)

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NJ - New Jersey Administrative Code > TITLE 10. HUMAN SERVICES > CHAPTER 43. GUARDIANSHIP: NEED, APPOINTMENT, CONTINUITY > SUBCHAPTER 4. APPOINTMENT OF GUARDIAN

§ 10:43-4.2 Temporary guardian

- (a) Upon the filing of a verified complaint in the court to declare a person incapacitated, the verified complaint may also request the appointment of a temporary guardian pursuant to [N.J.S.A. 3B:12-24.1\(c\)](#).
- (b) If the service component identifies a need for a temporary guardian, the administrative head of the service component or his or her designee shall notify the Chief of BGS.
- (c) If the Chief of BGS agrees that there is a critical need for a guardian in order to protect the health, safety and well-being of the individual, due to the risk of substantial harm or jeopardy of the physical or mental health, safety and well being of the individual, the Chief shall request that the court appoint a temporary guardian pending the completion of a capacity hearing.
- (d) The appointment of a temporary guardian is not an adjudication of incapacity and limits only the legal rights of the individual that are specified in the court order appointing the temporary guardian.

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[N.J.A.C. 10:43-5.1](#)

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NJ - New Jersey Administrative Code > TITLE 10. HUMAN SERVICES > CHAPTER 43. GUARDIANSHIP: NEED, APPOINTMENT, CONTINUITY > SUBCHAPTER 5. INDIVIDUALS RECEIVING GUARDIANSHIP SERVICES WITHOUT COURT APPOINTMENT

§ 10:43-5.1 Procedures for individuals receiving guardianship services without court appointment

- (a) Persons who have been receiving guardianship services from the Division without prior judicial review shall be clinically assessed regarding the continuing need for a guardian, pursuant to the provision of [N.J.S.A. 30:4-165.6](#). The Bureau of Guardianship Services shall coordinate the scheduling of the assessments.
- (b) At the request of the individual receiving services from the Division of Developmental Disabilities or at the request of a person acting on his or her behalf, the Division shall reassess the individual to ascertain whether the individual is still in need of a guardian or requires limited, not general guardianship. This reassessment shall take place within six months.
- (c) The same guidelines and criteria shall be applied as are delineated under N.J.A.C. 10:43-3.
1. If a conclusion is reached that the individual needs a guardian, the matter shall proceed in accordance with N.J.A.C. 10:43-4.
 2. If a conclusion is reached that the individual does not need a guardian, the administrative head of the service component shall sign a statement to that effect, which will be filed in the individual client record. The service component shall send a copy of the statement to the assigned regional office of BGS. BGS shall terminate guardianship services and notify the individual and the providers of service that he or she is no longer receiving guardianship services.

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[N.J.A.C. 10:43-6.1](#)

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NJ - New Jersey Administrative Code > TITLE 10. HUMAN SERVICES > CHAPTER 43. GUARDIANSHIP: NEED, APPOINTMENT, CONTINUITY > SUBCHAPTER 6. APPLICATION BY A PARTY OTHER THAN THE DIVISION FOR APPOINTMENT OF A GUARDIAN

§ 10:43-6.1 Procedures

- (a) As provided in [N.J.S.A. 30:4-165.7](#), if a family member or other interested party is requesting a certification from the DDD service component, the DDD administrative head must receive the report and certification from the physician or licensed psychologist, which shall be part of the guardianship complaint.
1. If the administrative head of the service component or service component staff has personal knowledge of the facts supporting the belief that the alleged incapacitated person suffers from a significant chronic functional impairment to such a degree that the person either lacks the cognitive capacity to make decisions for him or herself or to communicate, in any way, decisions to others pursuant to [N.J.S.A. 30:4-165.8](#), the administrative head of the service component shall provide, upon request, within 15 working days, a certification attesting to the individual's need for a guardian. The certification may also contain information indicating whether or not the service component unit supports appointment of the proposed guardian; and
 2. The affidavit or certification of a physician or licensed psychologist shall be arranged by the party filing the guardianship complaint.
- (b) If a family member or other interested party initiates legal action for the appointment of a guardian, and if the service component does not have the facts to support that the individual is in need of a guardian, or contends that the individual does not need a guardian or needs a limited guardian of the person, not a general guardian:
1. No certifications relative to the issue of guardianship shall be completed by the service component. Instead, the administrative head of the service component shall notify the applicant for guardianship in writing, that the administrative head does not have the facts to support that the individual needs a guardian or the individual is not considered to be in need of a guardian or appropriate documentation that only limited guardianship of the person is needed. The family or interested party shall be notified in writing that at the family's or interested party's request, a meeting may be held to review the decision of the administrative head.
- (c) If a complaint has been filed in Superior Court by a family member or other interested party for a judgment designating guardian, a copy of the moving papers shall be provided by the filer to the administrative head of the service component within 10 days of filing.
- (d) If the administrative head of the service component ascertains that a guardianship action is being pursued even though the service component disagrees that the individual is in need of a guardian or requires limited, not general guardianship, or if the service component does not support the appointment of the proposed guardian he or she shall notify the Chief, Bureau of Guardianship Services. The Chief, Bureau of Guardianship Services, shall, after appropriate legal consultation, determine whether action should be taken, based on the best interest of the individual and the individual's stated wishes.

History

HISTORY:

Amended by R.2010 d.280, effective December 6, 2010.

See: [42 N.J.R. 1288\(a\)](#), [42 N.J.R. 2954\(b\)](#).

Rewrote the introductory paragraph of (a), (a)1, the introductory paragraph of (b), and (b)1; and deleted (b)2.

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[N.J.A.C. 10:43-7.1](#)

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§ 10:43-7.1 Procedure for questioning prospective guardian suitability

(a) If the service component or the Bureau of Guardianship Services, as applicable, is informed that a family member or other interested party wishes to be appointed guardian, and the staff of the service component unit reaches the conclusion that the prospective guardian will not be to the best interest of the individual:

1. Staff of the service component shall notify the Chief, Bureau of Guardianship Services, as soon as practicable; and
2. The administrative head of the service component shall provide documentation to the Bureau of Guardianship Services of the reason of unsuitability, including the address and relationship of the person deemed unsuitable. BGS shall include this information in the guardianship application.

(b) If the service component has some concern about the suitability of the prospective guardian, where BGS is not petitioning for guardianship, this concern shall be referred for legal consultation.

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[N.J.A.C. 10:43-8.1](#)

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§ 10:43-8.1 Procedure

As a part of the annual Service Plan process for each adult with a guardian or receiving guardianship services, the service component shall review the continuing appropriateness of the individual's status with respect to guardianship. Any action on a recommendation for a change shall be supported by a clinical assessment.

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[N.J.A.C. 10:43-8.2](#)

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§ 10:43-8.2 Individual receiving guardianship services without court appointment; staff review of guardianship

- (a) If it is determined by the IDT that the individual continues to require guardianship, the finding shall be noted in the individual's record.
- (b) If a determination is reached by the IDT that the individual appears to be no longer in need of guardianship, a referral shall be made to the clinician for an assessment as set forth at [N.J.A.C. 10:43-2.1\(b\)2](#).
- (c) If there is disagreement on the issue by the IDT, the matter shall be referred to the head of the service component or the Chief of BGS, as appropriate.
- (d) If BGS is the guardian of an individual, a family member is identified and has interest in being named guardian, BGS will review if that family member is appropriate pursuant to [N.J.S.A. 30:4-165.13](#).
- (e) If the individual expresses his or her disagreement with having a guardian, the Division will make a referral to a clinician for a guardianship assessment. If the assessment concludes that the individual does not need a guardian, the administrative head of the service component shall sign a statement to that effect, which will be filed in the individual's client record. The service component shall send a copy of the statement to the assigned regional office of BGS. BGS shall terminate guardianship services and notify the individual and the providers of service that the individual is no longer receiving guardianship services.

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[N.J.A.C. 10:43-8.3](#)

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§ 10:43-8.3 Individual who has a court-appointed guardian; staff review of guardianship

- (a) The need for guardianship and the suitability of the guardian shall be reviewed by the IDT at least annually at the Service Plan meeting.
- (b) If BGS is the guardian of an individual, a family member is identified and has indicated interest in being named guardian, BGS will review if that family member is appropriate pursuant to [N.J.S.A. 30:4-165.13](#).
- (c) If a conclusion is reached by the IDT that all or some capacity should be restored, or if the individual expresses his or her disagreement with having a guardian, the team shall make a referral to a clinician for an assessment.
- (d) If the clinician concludes that all or some capacity should be restored, he or she shall communicate this recommendation to the administrative head of the service component and issue a report that meets the requirements of [N.J.A.C. 10:43-3.4](#).
- (e) If the IDT concludes that the current guardian is no longer able to serve in the best interest of the incapacitated person, the chairperson shall communicate this finding and relevant information to the administrative head of the service component.
- (f) If the administrative head of the service component concurs with the recommendation of the clinician or the IDT that a proceeding should be initiated to modify or rescind the guardianship, this conclusion shall be communicated in writing within 30 days to the guardian and the individual. If the Bureau of Guardianship Services is the appointed guardian, this finding shall also be communicated to the Public Advocate.
- (g) Whether or not the legal guardian has agreed or disagreed with the Division's position, the matter shall be referred to the Chief of the Bureau of Guardianship Services for referral to a court of competent jurisdiction. The Chief of the Bureau of Guardianship Services shall inform the administrative head of the service component of the documentation required in each individual case. If the incapacitated person desires to pursue the matter privately, the service component shall provide the necessary assistance to obtain an attorney and initiate the legal process.

History

HISTORY:

Amended by R.2010 d.280, effective December 6, 2010.

See: [42 N.J.R. 1288\(a\)](#), [42 N.J.R. 2954\(b\)](#).

In (d), updated the N.J.A.C. reference.

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[N.J.A.C. 10:43-8.4](#)

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§ 10:43-8.4 Special review

Notwithstanding any other provisions of this subchapter, a special review of an individual's guardianship status by the IDT may be requested at any time by the incapacitated person, his or her guardian or any interested party. The special review shall be conducted within 30 days of the request. The same potential disposition would be available as those delineated under [N.J.A.C. 10:43-8.2](#) and [8.3](#). Results of the special review shall be documented in the individual's confidential record.

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