

GEORGIA DEPARTMENT OF HUMAN RESOURCES



DHR PUBLIC GUARDIANSHIP MANUAL

Georgia Department of Human Resources
Division of Aging Services
Two Peachtree Street, N.W., 9th Floor
Atlanta, Georgia

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GEORGIA DEPARTMENT OF HUMAN RESOURCES
Division of Aging Services



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DEFINITIONS

- **Caregiver:** A caregiver is a person who has the responsibility for the care of a disabled adult or elder person as a result of family relationship, contract, voluntary assumption of that responsibility, or by operation of law.
- **Conservator:** a person given the legal right to be responsible for the assets and finances of a person deemed fully or partially incapable of providing these necessities for himself or herself. In Georgia law, "conservator" includes a "guardian of the property" appointed prior to July 1, 2005.
- **Department:** means the Department of Human Resources
- **DHR Representative:** individual who has been assigned case management duties and responsibilities for DHR public guardianship when the Department of Human Resources has been appointed as guardian.
- **Director:** means the director of the Division of Aging Services of the Department of Human Resources
- **Division:** means the Division of Aging Services of the Department of Human Resources.
- **Guardian:** means an individual or entity appointed by a probate court to be legally responsible for the care and management of an individual adult who lacks sufficient capacity to make or communicate significant responsible decisions concerning his or her health or safety. Within Georgia law, "guardian" includes a "guardian of the person" appointed prior to July 1, 2005.
- **Guardian ad Litem:** means an individual appointed pursuant to the provisions of O.C.G.A. § 29-9-2. The probate court in its discretion may at any time appoint a guardian ad litem to represent the interests of a minor, a proposed ward, or a ward in proceedings relating to the guardianship or conservatorship of that individual. However, the appointment of a guardian ad litem does not supersede any specific requirement that an individual be served by personal service and the guardian ad litem may not waive personal service for that individual.
- **Guardian of Last Resort:** a guardian appointed by the probate court when no other person or entity is qualified, suitable or available to serve.
- **Guardianship:** is a probate court appointment of guardian to make decisions for an adult who has lost sufficient capacity to make or communicate significant responsible decisions concerning his or her health or safety. The power of a guardian over the person of his or her ward is like that of a parent over his child, but only to the extent necessary for the adult's actual limitations and in the least

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restrictive manner possible while observing that adult's individual rights and dignity. Refer to Guardianship of Adults, O.C.G.A. §§ 29-4-1, et seq.

- **Incapacitated:** an adult whose ability to receive and evaluate information effectively and communicate decisions in any way is impaired to such a significant extent that he or she is partially or totally unable to manage his financial resources or to meet essential requirements for his physical health and safety.
- **Letters of Guardianship:** legal document that gives the guardian authority and duties to act on behalf of the ward.
- **PASRR:** means Preadmission Screening and Resident Review. PASRR is a federally mandated screening process for individuals with serious mental illness and/or Developmentally Disabled related diagnosis who apply or reside in Medicaid Certified beds in a nursing facility regardless of the source of payment. The federal regulations, 42 CFR §§ 483.100 through 483.138, governing PASRR can be found at:
www.access.gpo.gov/nara/cfr/waisidx_03/42cfr483_03.html
PASRR requirements are found in the State Operations Manual (SOM), Appendix P Survey Protocol for Long-Term Care Facilities and Appendix PP Interpretive Guidance for Long-Term Care Facilities. State Survey Agency Directors guidance from CMS regarding PASRR, September 27, 2007 from the Centers for Medicare and Medicaid Services (CMS):
<http://www.cms.hhs.gov/SurveyCertificationGenInfo/downloads/SCLetter07-38.pdf>
- **Personal Status Report (PSR):** report submitted to and required by the probate court to update the court on the physical, emotional and mental condition of the ward.
- **Public Guardian:** an individual or private entity, including a nonprofit entity, who meets the qualifications required in O.C.G.A. § 29-10-1, et seq. and has registered with and been duly approved by the probate court to serve as a public guardian of an adult pursuant to Code Section 29-4-3.
- **Public Guardianship:** the appointment and responsibility of a public official or publicly funded organization to serve as legal guardian in the absence of willing and responsible family members or friends, or in the absence of resources to employ, a private guardian. Since the 1960s, states and localities have developed a variety of mechanisms to address this "unbefriended" population, often serving as "guardian of last resort."

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In Georgia, public guardianship would include public guardians, the Department of Human Resources when appointed as guardian of last resort, and in certain circumstances, county guardians.

- **Representative Payee:** a person or other entity that manages an individual's Social Security, SSI and or Railroad Retirement benefits when an adult is determined unable to manage this function without assistance. (Also called "Payee")
- **Serious Injury:** bodily injury to a DHR ward that involves a substantial risk of death, unconsciousness, extreme physical pain, sexual assault, violence, protracted and obvious disfigurement or impairment.
- **State Office:** generally in the context used herein refers to the Division of Aging Services' physical office location at Two Peachtree Street, N.W., Atlanta, Georgia.
- **Unbefriended adults or elders:** those who do not have capacity to give informed consent, have not executed advance directives, have no legally authorized surrogate and no family, friends or interested persons to help with decision-making.
- **Unexpected Death:** a death of a DHR ward of that occurs as a result of homicide, suicide, accident or suddenly when in apparent good health.
- **Ward:** A person placed under the care and protection of a guardian or conservator.

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CHAPTER 100

PUBLIC GUARDIANSHIP

§101. INTRODUCTION

The Georgia Department of Human Resources Division of Aging Services is the State Agency on Aging (commonly named State Unit on Aging) pursuant to the federal Older Americans Act. It has organizationally been assigned public guardianship case management duties for adults that are traditionally performed by its Adult Protective Services staff. This manual seeks to define the unique role assigned by Georgia law for those adults who have no one qualified, suitable or available to serve as a guardian. "Unbefriended" elders and disabled adults are a vulnerable population that the Older Americans Act, the Aging Network, and Law and Aging experts have separately found there is an importance to adequately address.¹

§102. PUBLIC GUARDIANSHIP AND THE LAW

Guardianship is a judicial procedure, primarily handled in the Probate Court, to intervene in the life and affairs of persons who need help and protection in using and controlling their person and their property. The Guardianship Law and procedures are found in "GUARDIANS OF ADULTS", Chapter 4, Title 29; O.C.G.A. § 29-4-1, et seq.

Public Guardianship: Published in April 2005, *Wards of the State: A National Study of Public Guardianship*, is the first major national study of public guardianship since the seminal publication, *Wards of the State: A National Study of Public Guardianship*, Teaster, P., S., Wood, E., Hurme, S., et al., American Bar Association and the University of Kentucky (April 2005). [Public Guardianship and the Elderly, Winsor Schmidt (1981)] In the 2005 study, public guardianship is defined as 'the appointment and responsibility of a public official or publicly funded organization to serve as legal guardian in the absence of willing and responsible family members or friends, or in the absence of resources to employ, a private guardian. Since the 1960s, states and localities have developed a variety of mechanisms to address this "unbefriended" population, often serving as "guardian of last resort."

Guardianship is a last resort. As mandated by guardianship law, lesser restrictive alternatives and interventions to guardianship are pursued prior to the Probate Court's decision to appoint a legal guardian. If a guardianship is necessary, a qualified

¹Refer to the American Bar Association Commission on Law & Aging at <http://www.abanet.org/aging/> and Karp, Naomi and Wood, Erica, *Incapacitated and Alone: Health Care Decision-Making for the Unbefriended Elderly*, ABA Commission on Law and Aging (July 2003).

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individual or public guardian should be appointed only when no other person is available to serve as the guardian for the ward. A guardian of last resort is appointed only when no other person is suitable and available to serve as the guardian.

§103. GUARDIAN OF LAST RESORT IN GEORGIA

History of Guardian of Last Resort in Georgia: From 1974 and until July 1, 2005, certain individuals of a Department of Human Resources division or office performed guardian of last resort functions. In 1974, the Commissioner of the Department of Human Resources served in this capacity. Subsequently, in 1979, the directors of the county department of family and children services of the Division of Family and Children Services served as guardian of last resort for incapacitated adults. Adult Protective Services was created in 1981 and organizationally assigned to the county DFCS directors and under their supervision, performed guardianship duties and functions for county DFCS directors. The transfer of Adult Protective Services from the Division of Family and Children Services to the Division of Aging Services and the restructuring of DFCS in 2004, led to the Department requesting legislative changes for guardian of last resort. Effective July 1, 2005, with the enactment of HB 394, Committee Substitute, the Georgia General Assembly removed county department of family and children services directors as guardians of last resort and designated the Department of Human Resources as the entity to serve in that capacity. The Division of Aging Services is primarily assigned the public guardianship oversight and case management on behalf of the Department of Human Resources. The Division's Adult Protective Services Section is primarily assigned case management duties.

§104. DHR PUBLIC GUARDIANSHIP OF ADULTS

Appointment of the Department of Human Resources, as guardian: When appointed, the Department of Human Resources serves as Guardian of an adult when there is no one qualified, suitable and available to serve. Guardianship experts refer to this as "guardian of last resort." Under Georgia law, "guardian" is what was formerly called "guardian of the person."² The Department is appointed as an entity.

Alternatives to public guardianship should be pursued through the court to ensure the continued protection and preservation of the rights of the ward. Alternatives may include appointment of a successor guardian or restoration of the ward's rights.

The probate court determines the guardian pursuant to O.C.G.A. § 29-4-3. The Department of Human Resources does not serve as a conservator.

Georgia law provides an order of preference in the selection of guardians, as follows:

² The Department of Human Resources is not statutorily authorized to serve as a Conservator.

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§ 29-4-3. Order of preference in selection of guardians; written request nominating guardian; requirements of writing

- ⊕ (1) *The individual last nominated by the adult...*
- ⊕ (2) *The spouse of the adult or an individual nominated by the adult's spouse ...*
- ⊕ (3) *An adult child of the adult or an individual nominated by an adult child of the adult ...*
- ⊕ (4) *A parent of the adult or an individual nominated by a parent of the adult...*
- ⊕ (5) *A guardian appointed during the minority of the adult*
- ⊕ (6) *A guardian previously appointed in Georgia or another state;*
- ⊕ (7) *A friend, relative, or any other individual;*
- ⊕ (8) **Any other person, including a volunteer to the court, found suitable and appropriate who is willing to accept the appointment; and (Emphasis added)**
- ⊕ (9) *The county guardian.*

§105. ADULT GUARDIANSHIP AUTHORITY AND DHR

Requirements:

O.C.G.A. §29-4-3(b.1) provides:

(b.1) If no other person is available to serve as guardian of the ward, the judge may appoint a public guardian in accordance with Chapter 10 of this title. In the event the court determines that there is no public guardian registered in accordance with Chapter 10 of this title appropriately available to serve as guardian for a ward, the court may appoint the Department of Human Resources as guardian. If so appointed, the department shall designate a representative of the department to provide guardian services who shall take the oath of guardianship. If, after having been so appointed, the department presents to the court a public guardian registered in accordance with Chapter 10 of this title or some other person suitable and appropriate to serve as guardian of a ward and willing to so serve, the court shall allow the department to resign and shall appoint such public guardian or such other person. If the department is appointed pursuant to this subsection, it shall be bound by all the requirements of this chapter, except that it shall not be required to post bond or pay any cost or fee of court associated with the guardianship proceeding. If the department is appointed pursuant to this subsection and enters into a contract with an independent contractor for the provision of guardianship services, the expense of providing such services may be paid for from state funds appropriated for public guardians under Chapter 10 of this title or, upon approval of the court, from the estate of the ward.

Additionally, O.C.G.A. §29-4-2(a) distinguishes the Department of Human Resources and public guardians as exceptions to the requirement that an individual must be

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appointed as guardian. The Department, when appointed as guardian, serves as an entity. An individual is not appointed.

- The DHR, assumes the role of “guardian” based on Georgia Law.
- The DHR Representative shall take the “Oath of Guardianship” and obtain the “Letters of Guardianship” from the Court.
- When appointed by the court, the guardian shall be listed as the **“Department of Human Resources”** or the **“Georgia Department of Human Resources”**.
- The DHR Representative, acting on behalf of the Department as guardian, is fully authorized to exercise all the powers and duties of the guardianship from the date of the Letters of Guardianship.

DHR Representatives who have been assigned with case management duties and responsibilities for public guardianship are the Adult Protective Services section within the Division of Aging Services, Guardianship Services Providers under contract with DHR to provide public guardianship services to adults, and any Division of Aging Services staff as assigned specifically by the Director. The Department or DAS may authorize any personnel of the Department to carry out the entity's authority as guardian. The Division of Aging Services is primarily assigned public guardianship oversight and case management on behalf of the Department of Human Resources when appointed as guardian. The Division's Adult Protective Services Section primarily is assigned case management duties. Responsibility for activities related to case management and meeting the ward's basic needs shall be assigned to a responsible employee, contractor or volunteer of DHR.

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CHAPTER 200

DOCUMENTATION

§201. DOCUMENTING GUARDIANSHIP ACTIVITIES

Requirement:

All DHR adult guardianship cases shall have an open case record with ongoing documentation. Originals or copies of all related letters, reports and court documents should be inserted into the case record.

Guardianship Checklist:

Requirements:

- A "Checklist for Guardian" shall be used with each Guardianship case and filed in the client's case record.
- The Checklist is a tool to help ensure all areas of Guardianship responsibility are addressed. (Refer to Appendix A for "Checklist for Guardian")

§202. GUARDIANSHIP CHANGES

Requirements:

- All new guardianships, changes in the ward's living arrangement and terminations shall be reported to the DAS State Office, within 5 calendar days of the action or pursuant to any subsequent revision of policy by the APS Section Manager or Division Director. This information is to be submitted to the state office on the official "Guardianship Reporting Form". (Refer to Appendix B.) Guardianship law requires that a guardian report significant changes to the Probate Court.
- A ward cannot be placed out of state without the probate court's advance permission. Additionally, the APS State Office, Division Director and DAS Legal must be notified if placement is considered out-of-state.
- All deaths and/or serious injuries of a ward shall be reported to the State Office. Additionally, all deaths and/or serious injuries of a ward are to be reported by the State Office following the Department of Human Resources critical incident reporting policy or as required by subsequent policies of the DHR/DAS/APS.

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Notifications of Guardianship

Requirements:

- DHR representatives shall notify significant agencies, caregivers and others of the appointment or termination of guardianship. (Social Security Administration, Nursing Home, Home Health Agencies, etc.)
- DHR representatives shall give After Hours Emergency Contacts to caregivers, care providers and facilities for all adult guardianship clients.
- DHR representatives shall contact the Conservator, when one is appointed, for the purpose of having a joint meeting to share information, coordinate plans/activities related to meeting the client's monthly needs and making future plans (including burial).

§203. CONFIDENTIALITY

The Department of Human Resources shall protect the sensitive and confidential information obtained regarding public guardianship cases in accordance with the Health Insurance Portability and Accountability Act and state and federal laws and regulations. Additionally, state law protects the confidentiality of adult protective services records, as defined in O.C.G.A. § 30-5-7 of the Disabled Adult and Elder Persons Protection Act.

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CHAPTER 300
GUARDIANS AND WARDS

§301. RIGHTS OF THE WARD

O.C.G.A § 29-4-20. Rights of the ward; impact on voting and testamentary capacity.

- (a) In every guardianship, the ward has the right to:*
 - (1) A qualified guardian who acts in the best interest of the ward;*
 - (2) A guardian who is reasonably accessible to the ward;*
 - (3) Have the ward's property utilized to provide adequately for the ward's support, care, education, health, and welfare;*
 - (4) Communicate freely and privately with persons other than the guardian, except as otherwise ordered by a court of competent jurisdiction;*
 - (5) Individually, or through the ward's representative or legal counsel, bring an action relating to the guardianship, including the right to file a petition alleging that the ward is being unjustly denied a right or privilege granted by this chapter and Chapter 5 of this title and including the right to bring an action to modify or terminate the guardianship pursuant to the provisions of Code Sections 29-4-41 and 29-4-42;*
 - (6) The least restrictive form of guardianship assistance, taking into consideration the ward's functional limitations, personal needs, and preferences; and*
 - (7) Be restored to capacity at the earliest possible time ...*

Note: Letters of Guardianship or other orders of the court may give the ward additional rights. An appointment of a guardian is not automatically a determination of the right of the ward to vote and is not a determination that the ward lacks the capacity to make a will (testamentary capacity).

§302. GUARDIAN'S DUTIES

In Georgia, all guardianships of adults are designed to encourage the development of maximum self-reliance and independence in the adult and are ordered only to the extent necessitated by the adult's actual and adaptive limitations after a determination that less restrictive alternatives to the guardianship are not available or appropriate. [O.C.G.A. § 29-4-1 (f).]

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The duties of a guardian are listed in O.C.G.A. § 29-4-22, as follows:

O.C.G.A. § 29-4-22. Decisions on ward's well-being; obligations of guardian; liability of guardian.

(a) Except as otherwise provided by law or by the court, a guardian shall make decisions regarding the ward's support, care, education, health, and welfare. A guardian shall, to the extent feasible, encourage the ward to participate in decisions, act on the ward's own behalf, and develop or regain the capacity to manage the ward's personal affairs. To the extent known, a guardian, in making decisions, shall consider the expressed desires and personal values of the ward. A guardian shall at all times act as a fiduciary in the ward's best interest and exercise reasonable care, diligence, and prudence.

(b) A guardian shall:

(1) Respect the rights and dignity of the ward;

(2) Become or remain personally acquainted with the ward and maintain sufficient contact with the ward to know of the ward's capacities, limitations, needs, opportunities, and physical and mental health;

(3) If necessary, petition to have a conservator appointed;

(4) Endeavor to cooperate with the conservator, if any;

(5) Take reasonable care of the ward's personal effects;

(6) Arrange for the support, care, education, health, and welfare of the ward, considering the ward's needs and available resources;

(7) Expend money of the ward that has been received by the guardian for the ward's current needs for support, care, education, health, and welfare;

(8) Conserve for the ward's future needs any excess money of the ward received by the guardian; provided, however, that if a conservator has been appointed for the ward, the guardian shall pay to the conservator, at least quarterly, money to be conserved for the ward's future needs; ...

(9) Provide Personal Status Report (PSR) as required by the probate court; (Refer to Personal Status Report section below at § 303.)

(10) Promptly notify the court of any change in the ward's condition that in the opinion of the guardian might require modification or termination of the guardianship;

(11) Promptly notify the court of any conflict of interest between the ward and the guardian when the conflict arises or becomes known to the guardian and take any action as is required by Code Section 29-4-24; and

(12) Keep the court informed of the guardian's current address.

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Liability of Guardian

Pursuant to Georgia guardianship law, O.C.G.A. § 29-4-22 (c) ---

(c) A guardian, solely by reason of the guardian-ward relationship, is not personally liable for:

(1) The ward's expenses or the expenses of those persons who are entitled to be supported by the ward;

(2) Contracts entered into in the guardian's fiduciary capacity;

(3) The acts or omissions of the ward;

(4) Obligations arising from ownership or control of property of the ward; or

(5) Other acts or omissions occurring in the course of the guardianship. [O.C.G.A. § 29-4-22 (c).]

Generally speaking, there is no liability if the guardian acts reasonably and uses good judgment.

Least Restrictive Environment

A ward has a right to the least restrictive form of guardianship assistance considering the ward's functional limitations and disability, personal needs, preferences and values. The guardian must also balance the rights with health and safety issues facing the ward. DHR Representatives are encouraged to consult with the Division of Aging Services State Office for advice on utilizing resources for assessment available to the Department, as an entity. It is important to assess disability issues, language access, program resources, health and safety issues, and compliance with federal and state laws and regulations through consultation with supervisors, the Adult Protective Services section, and the Division State Office.

§303. PERSONAL STATUS REPORT (PSR)

Requirements:

- The Personal Status Report, required of the Guardian by the Probate Court, shall be completed and submitted to the Probate Court, on behalf of the Department of Human Resources by a DHR representative for the ward.
- Based on requirement of law, the Personal Status Report must be submitted to the Probate Court within sixty days from the date of the appointment and within sixty days after each anniversary date of appointment.

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O.C.G.A § 29-4-22(b)(9) pertaining to Personal Status Reports:

(9) Within 60 days after appointment and within 60 days after each anniversary date of appointment, file with the court and provide to the ward and to the conservator, if any, a personal status report concerning the ward, which shall include:

(A) A description of the ward's general condition, changes since the last report, and needs;

(B) All addresses of the ward during the reporting period and the living arrangements of the ward for all addresses;

(C) A description of the amount and expenditure of any funds that were received by the guardian pursuant to paragraph (7) of this subsection; and

(D) Recommendations for any alteration in the guardianship order;...

§304. SPECIAL ASSISTANT ATTORNEY GENERAL (SAAG)

When there is litigation after the appointment of the Department of Human Resources, DAS Legal shall be contacted immediately. Special Assistant Attorneys General (SAAGs) represent the agency in litigation. Since the Department of Human Resources as an entity serves as guardian, DHR Representatives are responsible for coordinating decisions for wards with their supervisors, District Managers, the APS Section, DAS Legal and other Division leadership as each situation warrants. The DHR Representative is not the sole decision-maker for the agency.

Note: Filing for a guardianship petition is solely authorized under Adult Protective Services investigation law when there is no other means to protect a person in need of protective services and is not part of DHR Public Guardianship.³ Process for filing petition under APS authority of the Disabled Adults and Elder Persons Protection Act is found in the Adult Protective Services Manual. The Department of Human Resources, as guardian, does not file guardianship petitions in its case management or guardianship role.

³ Disabled Adults and Elder Persons Protection Act, O.C.G.A. § 30-5-1, et seq.

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CHAPTER 400
DECISION MAKING

§401. GUIDELINES IN DECISION-MAKING

Requirements:

The Department of Human Resources shall:

- act to protect and preserve the ward's life;
- follow established guidelines in Decision Making; and
- seek the assistance and services of professionals for consultation purposes, as needed.

§402. MEDICAL CONSENT

If there are any questions or concerns about a particular medical treatment, DAS policy is that DHR Representatives consult with the APS Section and obtain legal advice from the Director's Office (DAS Legal). Appropriate documentation must be completed. In the event of an emergency or disaster, DHR Representatives performing public guardianship duties and functions on behalf of Department of Human Resources, as guardian of last resort, may not have sufficient time to consult with DAS staff and obtain all documentation. DHR Representatives will make a reasonable assessment of the factors required for a decision on medical treatment in order to achieve informed consent in emergency situations, and consult with supervisors and DAS as soon as possible.

To the extent known, representatives of DHR, in making decisions on behalf of DHR as guardian of last resort, shall consider the expressed desires and personal values of the ward. A guardian shall at all times act as a fiduciary in the ward's best interest and exercise reasonable care, diligence and prudence, pursuant to O.C.G.A. §29-4-22.

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Levels of Approval for Medical Consent:⁴

Routine medical consent involves medical treatment such as medical, vision, dental care that does not administer general anesthesia, and general admittance into hospice (except when client is entering hospice with life expectancy of 30 days or less). A case manager is permitted to approve medical treatment involving routine medical consent.

Although routine medical consent does not require a supervisor's approval; the supervisor should be fully briefed in advance, when possible, and in a timely manner.

Examples include:

- Vaccines
- Dental Work
- Diagnostic x-rays
- Sutures/Removal of Sutures
- Administration of local anesthesia
- Mental health/mental retardation behavior support plans
- Psychotropic medications (if ward does not refuse)
- Hospice (where life expectancy is more than 30 days)

Intermediate medical consent (Supervisor's/District Manager's Approval) requires the approval of the Supervisor and District Manager (or regional manager), and requires obtaining a second physician's written opinion. Supervisors must make this decision based upon what a reasonable supervisor making a medical consent decision in the particular situation would do in accordance with DHR/DAS training and policy.

Examples include:

- Administration of general anesthesia
- Minor surgery with little risk to ward
- Advanced diagnostic testing
- Emergency Surgery (if Division Director approval not required)
- Hospice (if life expectancy is 30 days or less)

Division Director's consent requires the approval or notification of the Division Director, Deputy Director or their designee when there is substantial risk to the ward, or end-of-life care.

Examples include:

- Neurosurgery
- Amputation or other similar surgeries
- Sterilization, in accordance with state law

⁴ Refer to Appendix C, DHR Medical Consent Authorization Form, DAS/MCAF 9/15/2007 or a subsequently approved form.

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- Court order required based on federal or state law
- Organ transplant
- Bypass surgery
- Electro-Convulsive Treatment (ECT)
- End-of-life care (e.g. *Order not to resuscitate (DNR order), removal of ventilator, etc.*) (notification only)

The Department of Human Resources, as guardian of an incapacitated adult, shall not authorize a "NO CODE" or "DNR" (Do Not Resuscitate) Order

§403. SPECIAL SITUATIONS AND GUIDELINES

The following guidelines provide clarification and direction in special situations. There are many factors that may need to be weighed in individual situations. Specific legal and programmatic consultation may be needed in order to address the uniqueness of individual cases.

Example of when consultation is required:

- ** The ward's religious beliefs prohibit the treatment or the family's wishes and the guardian's plans conflict or the guardian is requested to considering "forcing" medical treatment to prevent death against the ward's wishes.
- ** A ward wants an abortion or the physician is recommending an abortion.
- ** Request for organ transplant from ward to another or experimental treatment/research.

§403(a). Refusal of Medication and/or Treatment

While guardianship removes the right of a ward to consent to medical treatment, it does not necessarily mean that a guardian can consent to any and all types of treatment over the objection of a ward. A ward, generally speaking, cannot make an informed consent to medical treatment. A ward does, however, retain a liberty interest to object to certain unwanted medical treatments and procedures, such as ECT, physical detention or involuntary commitment, and medications. A guardian will receive consultation and notification rights of a ward who has a mental illness as in O.C.G.A. § 37-3-164, regardless of the objection of a ward. However, if a ward objects, the Department of Human Resources, as guardian, cannot force the ward to take medication before the ward is considered an imminent risk to self or others (unsafe or emergency), or to stay in the hospital until completely well. (Refer to *Heichelbech v. Evans*, 798 F.Supp. 708 (M.D.Ga. 09/01/1992)).

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In reviewing screening and treatment options for DHR wards with mental illness or developmental disabilities who reside in Medicaid certified beds in a nursing facility, determine if any behavioral support plans and/or Preadmission Screening and Resident Review (PASRR) progress documents are relevant.

§403(b). HIV Status

Example of when consultation is required:

- ** A ward is HIV positive and is sexually active. A ward that knows he/she is HIV positive and is sexually active must disclose to the sex partner that he/she is HIV positive. O.C.G.A. § 16-5-60 relates to reckless conduct causing harm to or endangering the bodily safety of another and the conduct by HIV infected persons. Such a person, failing to disclose, is guilty of a felony.**
- ** Under O.C.G.A. § 24-9-47, when a HIV positive person's physician reasonably believes that the spouse/sexual partner or any child is at risk of being infected by the HIV positive person... the physician may disclose to that spouse, sexual partner, or child. This is done after the physician attempts to tell the HIV positive person that disclosure must be done.**

The Department of Human Resources may disclose to the board of health of the county in which the HIV positive person resides or is located if reasonably necessary to protect the health and safety of that person or others who may have come in contact with the body fluids of the HIV infected person, consistent with Department policy. DHR or the county board of health may contact any person at risk of being infected with HIV by the HIV positive person.

§403(c). Do Not Resuscitate

A request that the guardian authorize a "NO CODE" or "Do Not Resuscitate".

This specifically addresses the restarting of the heart and/or lungs should they fail. When a person's heart and/or lungs cease working, procedures will be taken to restart the heart/lungs – unless there is a DNR/No Code on file for that person. People with Living Wills should have their stated wishes honored.

The Department of Human Resources, as guardian of an incapacitated adult shall not authorize a "NO CODE" or "DNR" (Do Not Resuscitate) Order.

- DHR shall not initiate legal action for the purpose of disconnecting life support.**
- DHR shall make the ward's treating physician aware when the ward has a Georgia Advance Directive for Health Care or a prior Durable Power of Attorney**

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for Health Care. The guardian indicates to the physician that Guardianship does not alter those arrangements.

- The Department of Human Resources shall be informed when a patient is determined to be a candidate for no resuscitation; however, DHR will leave this medical decision in the hands of the family and/or physician.
- Physicians or hospital personnel can be directed to O.C.G.A. § 31-39-4, the Cardiopulmonary Resuscitation Statute for persons authorized to issue an order not to resuscitate. DHR takes the position that the physician should follow the requirements of 31-39-4(e) in issuing an order not to resuscitate. (Refer to Appendix D.)
- The Department of Human Resources representative shall contact the Ombudsman on behalf of the client, if a nursing home or hospital states that a ward's admission is contingent on the guardian signing an advance directive or "no code". Do not sign such a form.
- When consenting for Hospice Care for a DHR ward, it is important for Hospice to understand that the Department of Human Resources, as Guardian is not able to authorize a DNR. This should not prevent the ward from benefiting from Hospice Care. Any problems in this area should be discussed with ward's treating physician.

§403(d). Responsibilities of Guardian During a Natural Disaster or National Crisis

The Department of Human Resources, as Guardian, will take appropriate measures to ensure the safety and well-being of all wards in the event of a crisis. DHR Representatives will document current addresses and other identifying information in case records. A list of DHR wards and current whereabouts is also maintained at the State Office.

§403(e). Allegations of Abuse, Neglect and Exploitation

DHR wards should be free from abuse, neglect and exploitation. As a mandated reporter, DHR representatives will report indications or allegations of abuse, neglect or exploitation as mandated by law. If Adult Protective Services receives a report of abuse, neglect and/or exploitation of a DHR ward, its investigation will use caution to use staff from another district for the APS investigation who is not involved in the day-to-day case management of the DHR ward. The assignment will be coordinated by APS Section staff at the State Office, with consultation as needed.

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§403(f). Critical Incident Reporting

Reports to the Division of Aging Services State Office shall be made using: APS Death, Serious Injury and Reportable Critical Incidents Reporting Form or its subsequently approved form in accordance with Division policy. Additionally, the Division shall follow all Department policy on Reporting of Urgent Incidents, Employee Misconduct, and Suspected Criminal Activities concerning serious injury or death of consumers or its subsequently approved Department policy.

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CHAPTER 500
END OF GUARDIANSHIP

§501. TERMINATING GUARDIANSHIP

Requirements:

DHR shall take actions to petition the Probate Court to modify or terminate the Guardianship of Person when:

- A) Someone on the preference order list is identified and willing to serve as Guardian.
- B) The condition of the ward has significantly changed to the extent that restoration of some or all rights is indicated.

Additionally, the Department of Human Resources shall be removed as guardian in accordance with O.C.G.A. § 29-4-3 (b.1):

"If, after having been so appointed, the department presents to the court a public guardian registered in accordance with Chapter 10 of this title or some other person suitable and appropriate to serve as guardian of a ward and willing to so serve, the court shall allow the department to resign and shall appoint such public guardian or such other person."

Note: The Department of Human Resources, as guardian, does not vouch for the qualifications, suitability or availability of a proposed successor guardian. The agency will present the name to the court in accordance with O.C.G.A. § 29-4-3 (b.1) for the probate court judge to determine suitability and appropriateness.

O.C.G.A. § 29-4-42. Termination of guardianship; required evidence; burden of proof; return of property.

(a) Upon the petition of any interested person, including the ward, or upon the court's own motion, and upon a proper showing that the need for a guardianship is ended, the court may terminate the guardianship and restore all personal and property rights to the ward. Except for good cause shown, the court shall order that notice of the petition be given, in whatever form the court deems appropriate, to the ward, the guardian, the ward's legal counsel, if any, and the ward's conservator, if any. The court shall appoint legal counsel for the ward and may, in its discretion, appoint a guardian ad litem.

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(b) A petition for termination must be supported either by the affidavits of two persons who have knowledge of the ward, one of whom may be the petitioner, or of a physician licensed to practice medicine under Chapter 34 of Title 43, a psychologist licensed to practice under Chapter 39 of Title 43, or a licensed clinical social worker, setting forth the supporting facts and determinations. If, after reviewing the petition and the affidavits, the court determines that there is no probable cause to believe that the guardianship should be terminated, the court shall dismiss the petition. If the petition is not dismissed, the court shall order that an evaluation be conducted, in accordance with the provisions of subsection (d) of Code Section 29-4-11. If, after reviewing the evaluation report, the court finds that there is no probable cause to believe that the guardianship should be terminated, the court shall dismiss the petition. If the petition is not dismissed, the court shall schedule a hearing, with such notice as the court deems appropriate.

(c) In any proceeding under this Code section, the burden is on the petitioner to show by a preponderance of the evidence that there is no longer a need for the guardianship.

(d) No petition for termination of a guardianship shall be allowed by the court within two years after the denial or dismissal on the merits of a petition for termination of the guardianship unless the petitioner shows a significant change in the condition or circumstances of the ward.

(e) The death of the ward automatically terminates the guardianship, except as otherwise provided in Code Section 29-4-43.

(f) Upon termination of the guardianship, the guardian shall deliver any money or property to the ward or, if a conservator has been appointed for the ward, to that conservator or, if the ward is deceased, to the ward's personal representative.

§502. TRANSFER OF GUARDIANSHIP

O.C.G.A. § 29-4-90. Transfer of guardianship following ward's permanent move; determining status of ward's residence; petition for receipt and acceptance of guardianship.

A foreign court is a court in another state or territory covered by the Constitution of the United States.)

(a) A guardian may petition the Georgia court that has jurisdiction over the guardianship to transfer the guardianship to a foreign court of competent jurisdiction if the ward has moved permanently to the foreign jurisdiction.

A DHR Representative must notify the APS Section at the State Office and DAS Legal if actions are considered that would move a ward out-of-state. DHR wards may not be moved out-of-state without prior approval of the Director. Therefore, a case manager

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will fully apprise their supervisor, District Manager, or other regional supervision (Guardianship Service Providers), and DAS Legal of any plans for the removal of a ward from Georgia. Additionally, notification must be given to the court prior to any process to remove a ward out-of-state. If litigation or a hearing is required, then a Special Assistant Attorney General (SAAG), if available, and DAS Legal will be notified by the DHR Representative. ***[Note: Within guardianship law, the probate court must appoint an attorney for the ward. Additionally, if the ward is 60 years of age or older, a DHR Representative may notify Elderly Legal Assistance Program for representation of the ward.]***

O.C.G.A. § 29-4-91. Requirements of petition to transfer guardianship.

The petition to transfer a guardianship to a foreign jurisdiction shall include the following:

(1) The name and address of the foreign court to which the guardianship shall be transferred and an authenticated copy of the petition for receipt and acceptance of a foreign guardianship if previously filed in the foreign court;

(2) A listing of any other guardianship petitions that are pending in any jurisdiction and the names and addresses of the courts where the petitions have been filed;

(3) The petitioner's name, address, and county of domicile;

(4) The name, age, and current address of the ward and the new or proposed address of the ward;

(5) The names and addresses of the following, if living:

(A) The spouse of the ward; and

(B) All children of the ward; or

(C) If there are no adult children, then at least two adults in the following order of priority:

(i) Lineal descendants of the ward;

(ii) Parents and siblings of the ward; and

(iii) Friends of the ward;

(6) The name and address of the person responsible for the care and custody of the ward, if other than the petitioner, and of any other guardian currently serving;

(7) The name and address of any legal representative, other than the petitioner, including any legal counsel, guardian ad litem, or court visitor appointed by the foreign court for the ward;

(8) The name and address of the ward's conservator, if any; and

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(9) The reason for moving the ward and the reason the transfer of the guardianship is in the ward's best interest.

(Code 1981, 29-4-91, enacted by Ga. L. 2004, p. 161, 1.)

O.C.G.A. § 29-4-94. Required findings prior to transfer of guardianship; orderly and coordinated transfer of guardianship.

(a) The court may grant a petition to transfer a guardianship to a foreign court of competent jurisdiction if the court finds that:

(1) The guardian is presently in good standing with the court; and

(2) The transfer of the guardianship to the foreign jurisdiction is in the best interest of the ward...

§503. DEATH OF A WARD

Requirements:

The death of the ward automatically terminates the guardianship authority of the Department of Human Resources.

DHR, who was Guardian at the time of the ward's death, shall take actions to notify all known relatives, next-of-kin, other significant persons and agencies/care coordinators of the death.

Written notification of the death of the ward shall be made to the State Office within 5 calendar days. A report shall be made to the DAS APS Section, immediately upon receipt of any such report of a ward's unexpected death no later than the close of the next business day (with copy to District Manager & Supervisor). An "unexpected death" is defined as death that occurs as a result of homicide, suicide, accident or suddenly when in apparent good health. (Refer to Definitions.)

Reports shall be made using: APS Death, Serious Injury and Reportable Critical Incidents Reporting Form (Revised 11/9/07) or its subsequently approved form. A final personal status report shall be immediately filed with the probate court of jurisdiction.

Request for authorization for autopsy or donation of ward's body for research

- As guardianship authority ceases at the death of a ward, the Department of Human Resources, as guardian, has no authority to authorize an autopsy or donation of a ward's body for research and cannot give consent.

Note: The Coroner and/or Medical Examiner have the legal authority to require or authorize an autopsy.

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Request for Department of Human Resources to sign to release ward's body from a hospital/nursing home to a funeral home or to arrange and/or pay for the ward's funeral

- The Department of Human Resources, as Guardian, has no authority to release a ward's body from a hospital/nursing home to a funeral home.
- The Department of Human Resources, as Guardian, has no authority to authorize cremation of a body. The Conservator, if one has been appointed, should handle all necessary arrangements.
- The Division's Legal Services Officer and the Special Assistant Attorney General (if SAAG is involved) shall be consulted on matters of law, as needed, related to the death of a ward.

Payeeship Funds held at time of Death

When DFCS is Representative Payee at the time of a ward's death, any outstanding debts/bills may be paid from the funds held in the payeeship account. DFCS may issue a check, from client's funds, to the funeral home for burial. Any remaining funds held must be turned over to the Conservator or Probate Court.

APPENDICES

GUARDIANSHIP CHECKLIST

- ☐ Take the Oath and obtain Letters of Guardianship.
- ☐ Date appointed Guardian _____
- ☐ Obtain names, addresses, phone numbers of ward's interested others.

- ☐ Is there a Conservator/Guardian of Property? name, address, phone
- ☐ Does the ward receive any funds under their name? From whom? How much?
- ☐ Are there funds in a patient account at a facility? How much?
- ☐ Obtain ward's Social Security, Medicaid, and Medicare numbers.
- ☐ Is ward eligible for Veteran's benefits, SSA-D, SSI, Medicaid? Has anyone applied for benefits?

- ☐ Obtain name of ward's physician and other treating professionals.
- ☐ Date of last known physical exam? Last lab tests? X-rays?
- ☐ Schedule appointment with treating physician. Attend with ward.
- Obtain list of ward's medicines and over-the-counter drugs.

- ☐ Does ward wear or need glasses? Date of last known eye exam?
- ☐ Does ward wear or need dentures? Date of last known dental exam?
- ☐ Does ward wear or need hearing aid? Date of last known hearing exam?
- ☐ Does ward use or need walker? Wheelchair? Prosthesis?
- ☐ Does ward need podiatry services?
- ☐ Does ward need special exams? Mammogram? Pap test? Colo-rectal smear?
- ☐ What is the medical diagnosis? Recommended course of treatments?
- ☐ Does ward require extended physical assessments from other professionals?
- ☐ Did ward have recent surgery? Diagnosis? Follow-up appointment needed?

- ☐ Obtain name of ward's psychiatrist or other mental health professional.
- ☐ Date of last know mental exam? Should one be scheduled?
- ☐ What is mental diagnosis? Recommended course of treatment?
- ☐ What, if any, psychotropic medicines does ward take?
- ☐ Does ward need counseling for a mental health problem?
- ☐ Has the ward been hospitalized for mental problems? Where? When?

- ☐ Does ward's living environment provide basic needs met and safety? If not, why?
- ☐ What does ward's physician recommend?
- ☐ Where does the ward wish to live?

- ☐ Has ward's clothing and personal items been inventoried?
- ☐ Has ward's clothing and personal items been marked?
- ☐ Does the ward wish to have own furniture, TV, radio, mementos, photographs?
- ☐ Can ward keep personal jewelry or other valuables? Consider placing them in a secure place.
- ☐ Consult with Conservator/Guardian of Property or Bank trustee when considering change in residence.

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- ☐ **Attend care plan conferences.**
- ☐ **Is there a pre-arranged funeral or cremation? Is there a cemetery plot? Has it been pre-paid?**
- ☐ **Does ward have a will? Where is will located?**
- ☐ **Did the ward dictate funeral arrangements in a Will?**
- ☐ **Make a list of individuals to be notified in the event of an emergency of the ward's death. Include State Office.**
- ☐ **Advance directives? Living will?**
- ☐ **Complete Case Plan (involve ward and all other interested parties)**
- ☐ **Maintain accurate records of ward's changes in address (dates and addresses)**
- ☐ **Maintain records of all medical and psychiatric treatments, hospitalizations, surgery.**
- ☐ **Notify attorney of record, Conservator/Guardian of Property or Bank trustee, ward's family, friends, service provider of any changes in health or residence.**
- ☐ **An APS case manager will see ward each month.**
- ☐ **Have ward examined by a doctor at least once annually.**
- ☐ **Prepare and submit to the Probate Court the Personal Status Report.**



B. J. Walker, Commissioner

Georgia Department of Human Resources • Division of Aging Services • Maria Greene, Division Director
Two Peachtree Street, NW • Suite 9-398 • Atlanta, Georgia 30303-3142 • Phone: 404-657-5258 • Fax: 404-657-5285

PLEASE SEND THIS FORM BY GROUPWISE ATTACHMENT TO:
CHARLOTTE MELLIX, APS Program Associate

Date:

Mary Martha Rugg, Section Manager
Adult Protective Services
Division of Aging Services
Two Peachtree Street, N.W. 9th Floor
Atlanta, Georgia 30303

RE: Name of Ward:
Birthdate:
Social Security Number:
Name of Facility:
Type of Facility:
Address of Facility:

Name of Guardian of Property (if applicable):

Dear Mrs. Rugg:

This is to inform you:

_____ A. The above-named person became a ward of Adult Protective Services through DHR on _____ Adult Protective Services will monitor and provide ongoing services to the ward.

The petition was filed by: _____

_____ This is a Permanent Guardianship.

_____ This is an Emergency Guardianship.

Comments:

_____ B. Ward's address has changed to the above.

_____ C. Guardianship was terminated on _____
Reason: _____

Submitted by: APS Case Manager _____

Approved by: APS Supervisor _____

MEDICAL CONSENT AUTHORIZATION FORM
Georgia Department of Human Resources as Guardian of Last Resort
Represented by the Division of Aging Services/Adult Protective Services

Please indicate which type of consent is required:

☐ Routine ☐ Intermediate ☐ Division Director's Approval/Notification

NAME _____

ADDRESS _____

CLIENT SS# _____ DOB: _____ AGE: _____

PROCEDURE RECOMMENDED:

Informed consent issues addressed ☐ Yes ☐ No

Alternatives and reasons why the alternatives are not being pursued: _____

Goal of the treatment/Why is the treatment needed? _____

Treatment needed no later than _____

Outcome if no action is taken _____

Risk/consequences/side effects of the treatment/ involved _____

Is Court order required _____

State/Include any preferences the ward has previously stated both verbally and through advance directives _____

Decision Making Capacity of the ward _____

__ #1 Medical Opinion, physician's name and organization's name (see attached)

__ #2 Medical Opinion, if applicable, physician's name and organization's name (see attached)

Physician's Information:

(Print Name)

(Print Facility & Address)

(Print Name)

(Print Facility & Address)

Medical Consent Approved by:

Case manager approval _____

Supervisor approval, if applicable _____

DAS/APS Section staff approval, if applicable _____

District Manager's approval, if applicable _____

Division Director/Deputy Director/Designee approval, if applicable _____

To the extent known, representatives of DHR, in making decisions on behalf of DHR as guardian of last resort, shall consider the expressed desires and personal values of the ward. A guardian shall at all times act as a fiduciary in the ward's best interest and exercise reasonable care, diligence and prudence, pursuant to O.C.G.A. §29-4-22 and as an addendum to Adult Protective Services Policy Manual, Chapter 2000, §2007.10.

If there are any questions or concerns about a particular medical treatment, DAS policy is that staff consults with the APS Section and obtain legal advice from the Director's Office. In the event of an emergency or disaster, DHR staff handling duties and functions on behalf of DHR as guardian of last resort may not have sufficient time to consult with DAS staff and obtain all documentation. DHR representatives (DAS staff) will make a reasonable assessment of the factors required for decision on medical treatment in order to achieve informed consent.

Levels of Approval for Medical Consent:

Routine medical consent involves medical treatment such as medical, vision, dental care that does not administer general anesthesia, and general admittance into hospice (*except when client is entering hospice with life expectancy of 30 days or less*). Although routine medical consent does not require a supervisor's approval; the supervisor should be fully briefed in advance, when possible, and in a timely manner.

Examples include:

Vaccines	Administration of local anesthesia
Dental Work	Mental health/mental retardation behavior support plans
Diagnostic x-rays	Psychotropic medications (<i>if ward does not refuse</i>)
Sutures/Removal of Sutures	Hospice (<i>where life expectancy is more than 30 days</i>)

Intermediate medical consent (Supervisor's/District Manager's Approval) requires the approval of the Supervisor and District Manager, and obtain a second physician's opinion. Supervisors make this decision based upon what a reasonable supervisor making a medical consent decision in the particular situation would do in accordance with DAS/APS training and policy.

Examples include:

- Administration of general anesthesia
- Minor surgery with little risk to ward
- Advanced diagnostic testing
- Emergency Surgery (if Division Director approval not required)
- Hospice (*if life expectancy is 30 days or less*)

Division Director's consent requires the approval or notification of the Division Director, Deputy Director or their designee when there is substantial risk to the ward, or end-of-life care.

Examples include:

- Neurosurgery
- Amputation or other nonreversible surgeries
- Sterilization, in accordance with state law
- Court order required based on federal or state law
- Organ transplant
- Bypass surgery
- Electro-Convulsive Treatment (ECT)
- End-of-life care (*e.g. Order not to resuscitate (DNR order), removal of ventilator, etc.*)

O.C.G.A § 31-39-4. Persons authorized to issue order not to resuscitate.

(a) It shall be lawful for the attending physician to issue an order not to resuscitate pursuant to the requirements of this chapter. Any written order issued by the attending physician using the term "do not resuscitate," "DNR," "order not to resuscitate," "no code," or substantially similar language in the patient's chart shall constitute a legally sufficient order and shall authorize a physician, health care professional, or emergency medical technician to withhold or withdraw cardiopulmonary resuscitation. Such an order shall remain effective, whether or not the patient is receiving treatment from or is a resident of a health care facility, until the order is canceled as provided in Code Section 31-39-5 or until consent for such order is revoked as provided in Code Section 31-39-6, whichever occurs earlier. An attending physician who has issued such an order and who transfers care of the patient to another physician shall inform the receiving physician and the health care facility, if applicable, of the order.

(b) An adult person with decision-making capacity may consent orally or in writing to an order not to resuscitate and its implementation at a present or future date, regardless of that person's mental or physical condition on such future date. If the attending physician determines at any time that an order not to resuscitate issued at the request of the patient is no longer appropriate because the patient's medical condition has improved, the physician shall immediately notify the patient.

(c) The appropriate authorized person may, after being informed of the provisions of this Code section, consent orally or in writing to an order not to resuscitate for an adult candidate for nonresuscitation; provided, however, that such consent is based in good faith upon what such authorized person determines such candidate for nonresuscitation would have wanted had such candidate for nonresuscitation understood the circumstances under which such order is being considered.

(d) Any parent may consent orally or in writing to an order not to resuscitate for his or her minor child when such child is a candidate for nonresuscitation. If in the opinion of the attending physician the minor is of sufficient maturity to understand the nature and effect of an order not to resuscitate, then no such order shall be valid without the assent of such minor.

(e) If none of the persons specified in subsections (b), (c), and (d) of this Code section is reasonably available or competent to make a decision regarding an order not to resuscitate, an attending physician may issue an order not to resuscitate for a patient, provided that:

(1) Such physician determines with the concurrence of a second physician, in writing in the patient's medical record, that such patient is a candidate for nonresuscitation;

(2) An ethics committee or similar panel, as designated by the health care facility, concurs in the opinion of the attending physician and the concurring physician that the patient is a candidate for nonresuscitation; and

(3) The patient is receiving inpatient or outpatient treatment from or is a resident of a health care facility other than a hospice or a home health agency.