

CHAPTER 252A

MENTAL RETARDATION PROTECTION

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252A.01 POLICY AND CITATION.

Subdivision 1. **Policy.** (a) It is the policy of the state of Minnesota to provide a coordinated approach to the supervision, protection, and habilitation of its adult mentally retarded citizens. In furtherance of this policy, sections 252A.01 to 252A.21 are enacted to authorize the commissioner of human services to:

(1) supervise those adult mentally retarded citizens who are unable to fully provide for their own needs and for whom no qualified person is willing and able to seek private guardianship or conservatorship under sections 525.539 to 525.705; and

(2) to protect adult mentally retarded persons from violation of their human and civil rights by assuring that they receive the full range of needed social, financial, residential, and habilitative services to which they are lawfully entitled.

(b) Public guardianship or conservatorship is the most restrictive form of guardianship or conservatorship and should be imposed only when no other acceptable alternative is available.

Subd. 2. **Citation.** Sections 252A.01 to 252A.21 may be cited as the "public guardianship for adults with mental retardation act."

History: 1975 c 208 s 1; 1984 c 654 art 5 s 58; 1987 c 185 art 1 s 1

252A.02 DEFINITIONS.

Subdivision 1. For the purposes of sections 252A.01 to 252A.21 the terms defined in this section have the meanings given them.

Subd. 2. **Mentally retarded person.** "Mentally retarded person" refers to any person age 18 or older who has been diagnosed as having significantly subaverage intellectual functioning existing concurrently with demonstrated deficits in adaptive behavior such as to require supervision and protection for the person's welfare or the public welfare.

Subd. 3. "Commissioner" means the commissioner of human services or the commissioner's designees.

Subd. 4. **Regional center.** "Regional center" means a state-operated facility for persons with mental illness, mental retardation, or chemical dependency that is under the direct administrative authority of the commissioner.

Subd. 5. "Licensed physician" means a person licensed under the laws of Minnesota to practice medicine or a medical officer of the government of the United States while in Minnesota in performance of official duties.

Subd. 6. **Near relative.** "Near relative" means a spouse, parent, adult sibling, or adult child.

Subd. 7. **Public guardian.** "Public guardian" means the commissioner of human services when exercising all the powers designated in section 252A.111.

Subd. 8. **Public conservator.** "Public conservator" means the commissioner of human services when exercising some, but not all the powers designated in section 252A.111.

Subd. 9. "Ward" means a mentally retarded person for whom the court has appointed a public guardian.

Subd. 10. "Conservatee" means a mentally retarded person for whom the court has appointed a public conservator.

Subd. 11. **Interested person.** "Interested person" means an interested responsible adult, including, but not limited to, a public official, guardian, spouse, parent, adult sibling, legal counsel, adult child, or next of kin of an allegedly mentally retarded person.

Subd. 12. **Comprehensive evaluation.** "Comprehensive evaluation" shall consist of:
 (1) a medical report on the health status and physical condition of the proposed ward, prepared under the direction of a licensed physician;

(2) a report on the proposed ward's intellectual capacity and functional abilities, specifying the tests and other data used in reaching its conclusions, prepared by a psychologist who is qualified in the diagnosis of mental retardation; and

(3) a report from the case manager that includes:

(i) the most current assessment of individual service needs as described in rules of the commissioner;

(ii) the most current individual service plan as described in rules of the commissioner; and

(iii) a description of contacts with and responses of near relatives of the proposed ward notifying them that a nomination for public guardianship has been made and advising them that they may seek private guardianship.

Each report shall contain recommendations as to the amount of assistance and supervision required by the proposed ward to function as independently as possible in society. To be considered part of the comprehensive evaluation, reports must be completed no more than one year before filing the petition under section 252A.05.

Subd. 13. **Case manager.** "Case manager" means the person designated by the county board under rules of the commissioner to provide case management services.

Subd. 14. **Local agency.** "Local agency" means the agency designated by the county board of commissioners, human services boards, county welfare boards in the several counties of the state, or multicounty welfare boards or departments where those have been established under law.

Subd. 15. **Visitor.** "Visitor" means a person who is trained in law, health care, or social work and is an officer, employee, or special appointee of the court with no personal interest in the proceedings.

History: 1975 c 208 s 2; 1984 c 654 art 5 s 58; 1986 c 444; 1987 c 185 art 1 s 2-11

252A.03 NOMINATION OF COMMISSIONER AS GUARDIAN OR CONSERVATOR.

Subdivision 1. The commissioner may be nominated in a sworn written request by any one of the following to act as guardian or conservator for any mentally retarded person:

(a) An interested person;

(b) The guardian or conservator of the person of the mentally retarded person to act as successor;

(c) The mentally retarded person.

Subd. 2. **Acceptance or rejection.** The commissioner shall accept or reject the nomination in writing within 20 working days of the receipt of a comprehensive evaluation provided for in section 252A.04. The commissioner's acceptance shall be binding upon the commissioner and successors. Acceptance of a nomination shall confer no authority on the commissioner unless affirmed at a judicial hearing. Rejection of a nomination by the commissioner shall not bar the filing of a petition pursuant to section 252A.06.

Subd. 3. **Standard for acceptance.** The commissioner shall accept the nomination if the comprehensive evaluation concludes that:

- (1) the person alleged to have mental retardation is, in fact, mentally retarded;
- (2) the person is in need of the supervision and protection of a conservator or guardian; and
- (3) no qualified person is willing to assume private guardianship or conservatorship under sections 525.539 to 525.705.

Subd. 4. **Alternatives.** Public guardianship or conservatorship may be imposed only when no acceptable, less restrictive form of guardianship or conservatorship is available. The commissioner shall seek parents, near relatives, and other interested persons to assume private guardianship for persons with developmental disabilities who are currently under public guardianship. If a person seeks to become a private guardian or conservator, costs to the person may be reimbursed under section 525.703, subdivision 3, paragraph (b). The commissioner must provide technical assistance to parents, near relatives, and interested persons seeking to become private guardians or conservators.

History: 1975 c 208 s 3; 1977 c 415 s 1; 1986 c 444; 1987 c 185 art 1 s 12,13; 1989 c 282 art 6 s 23

252A.04 COMPREHENSIVE EVALUATION.

Subdivision 1. **Local agency.** Upon receipt of a written nomination, the commissioner shall promptly order the local agency of the county in which the proposed ward resides to coordinate or arrange for a comprehensive evaluation of the proposed ward.

Subd. 2. A proposed ward who, at the time the comprehensive evaluation is to be performed, has been under medical care shall not be so under the influence or so suffer the effects of drugs, medication, or other treatment as to be hampered in the testing or evaluation process. When in the opinion of the licensed physician attending the proposed ward, the discontinuance of medication or other treatment is not in the proposed ward's best interest, the physician shall record a list of all drugs, medication or other treatment which the proposed ward received 48 hours immediately prior to any examination, test or interview conducted in preparation for the comprehensive evaluation.

Subd. 3. **Time.** The local agency shall prepare and forward the comprehensive evaluation to the commissioner within 90 days of the date the commissioner orders the evaluation.

Subd. 4. The comprehensive evaluation shall be kept on file at the department of human services and shall be open to the inspection of the proposed ward and such other persons as may be given permission by the commissioner.

History: 1975 c 208 s 4; 1977 c 415 s 2; 1984 c 654 art 5 s 58; 1986 c 444; 1987 c 185 art 1 s 14,15

252A.05 COMMISSIONER'S PETITION FOR APPOINTMENT AS PUBLIC GUARDIAN OR PUBLIC CONSERVATOR.

In every case in which the commissioner agrees to accept a nomination, the local agency, within 20 working days of receipt of the commissioner's acceptance, shall petition on behalf of the commissioner in the county or probate court of the county of residence of the mentally retarded person for appointment to act as public conservator or public guardian of the mentally retarded person.

History: 1975 c 208 s 5; 1986 c 444; 1987 c 185 art 1 s 16

252A.06 PETITION FOR APPOINTMENT OF PUBLIC GUARDIAN OR PUBLIC CONSERVATOR.

Subdivision 1. **Who may file.** The commissioner, the local agency, a mentally retarded person or any parent, spouse or relative of a mentally retarded person may file a verified petition alleging that the appointment of a public conservator or public guardian is required.

Subd. 2. Contents. The petition shall set forth:

(1) the name and address of the petitioner, and, in the case of a petition brought by a person other than the commissioner, whether the petitioner is a parent, spouse, or relative of the proposed ward;

(2) whether the commissioner has accepted a nomination to act as public conservator or public guardian;

(3) the name, address, and date of birth of the proposed ward;

(4) the names and addresses of the nearest relatives and spouse, if any, of the proposed ward;

(5) the probable value and general character of the proposed ward's real and personal property and the probable amount of the proposed ward's debts;

(6) the facts supporting the establishment of public conservatorship or guardianship, including that no family member or other qualified individual is willing to assume private guardianship or conservatorship responsibilities under sections 525.539 to 525.705; and

(7) if conservatorship is requested, the powers the petitioner believes are necessary to protect and supervise the proposed conservatee.

History: 1975 c 208 s 6; 1986 c 444; 1987 c 185 art 1 s 17

252A.07 FILING OF COMPREHENSIVE EVALUATION.

Subdivision 1. With petition. When a petition is brought by the commissioner or local agency, a copy of the comprehensive evaluation shall be filed with the petition. If a petition is brought by a person other than the commissioner or local agency and a comprehensive evaluation has been prepared within a year of the filing of the petition, the local agency shall forward a copy of the comprehensive evaluation to the court upon notice of the filing of the petition. If a comprehensive evaluation has not been prepared within a year of the filing of the petition, the local agency, upon notice of the filing of the petition, shall arrange for a comprehensive evaluation to be prepared and forwarded to the court within 90 days.

Subd. 2. A copy of the comprehensive evaluation shall be made available by the court to the proposed ward, the proposed ward's counsel, the county attorney, the attorney general and the petitioner.

Subd. 3. Evaluation required; exception. No action for the appointment of a public guardian may proceed to hearing unless a comprehensive evaluation has been first filed with the court; provided, however, that an action may proceed and a guardian appointed if the director of the local agency responsible for conducting the comprehensive evaluation has filed an affidavit that the proposed ward refused to participate in the comprehensive evaluation and the court finds on the basis of clear and convincing evidence that the proposed ward is mentally retarded and in need of the supervision and protection of a guardian.

History: 1975 c 208 s 7; 1977 c 415 s 3; 1986 c 444; 1987 c 185 art 1 s 18,19

252A.08 [Repealed, 1987 c 185 art 2 s 5]

252A.081 NOTICE OF HEARING.

Subdivision 1. General. Except as otherwise provided in this section, section 525.55 applies to a notice of hearing for public guardianship.

Subd. 2. Service of notice. Service of notice on the ward or proposed ward must be made by a nonuniformed person. To the extent possible, the process server or visitor shall explain the document's meaning to the proposed ward. In addition to the persons required to be served under section 525.55, subdivision 1, the mailed notice of the hearing must be served on the commissioner, the local agency, and the county attorney.

Subd. 3. Attorney. In place of the notice of attorney provisions in section 525.55, subdivision 2, the notice must state that the court will appoint an attorney for the proposed ward unless an attorney is provided by other persons.

Subd. 4. **Service of petition on commissioner.** When a petition has been filed by a person other than the commissioner, the court shall promptly forward a copy of the petition and any other documents filed with or issued by the court to the commissioner.

Subd. 5. **Defective notice of service.** A defect in the service of notice or process, other than personal service upon the proposed ward or conservatee or service upon the commissioner and local agency within the time allowed and the form prescribed in this section and section 525.55, does not invalidate any public guardianship or conservatorship proceedings.

History: 1987 c 185 art 1 s 20

252A.09 APPOINTMENT OF COUNSEL.

Subdivision 1. Upon the filing of the petition, the court shall appoint an attorney for the proposed ward, unless such counsel is provided by others.

Subd. 2. Counsel shall visit with and, to the extent possible, consult with the proposed ward prior to the hearing and shall be given adequate time to prepare therefor. Counsel shall be given the full right of subpoena and shall be supplied with a copy of all documents filed with or issued by the court.

History: 1975 c 208 s 9

252A.10 [Repealed, 1987 c 185 art 2 s 5]

252A.101 HEARING.

Subdivision 1. **General.** Except as otherwise provided in this section, section 525.551, subdivisions 1 to 4, apply to public guardianship hearings.

Subd. 2. **Waiver of presence.** The proposed ward may waive the right to be present at the hearing only if the proposed ward has met with counsel and specifically waived the right to appear.

Subd. 3. **Medical care.** If, at the time of the hearing, the proposed ward has been under medical care, the ward has the same rights regarding limitation on the use of drugs, medication, or other treatment before the hearing that are available under section 252A.04, subdivision 2.

Subd. 4. **County attorney.** The county attorney shall appear and represent the petitioner upon the request of the court or the petitioner. The petitioner must be notified of the right to request that the county attorney appear. The attorney general may appear and represent the commissioner in any proceedings brought under this chapter.

Subd. 5. **Findings.** (a) In all cases the court shall make specific written findings of fact, conclusions of law, and direct entry of an appropriate judgment or order. The court shall order the appointment of the commissioner as guardian or conservator if it finds that:

(1) the proposed ward or conservatee is a mentally retarded person as defined in section 252A.02, subdivision 2;

(2) the proposed ward or conservatee is incapable of exercising specific legal rights, which must be enumerated in its findings;

(3) the proposed ward or conservatee is in need of the supervision and protection of a guardian or conservator; and

(4) no appropriate alternatives to public guardianship or public conservatorship exist that are less restrictive of the person's civil rights and liberties, such as appointing a guardian or conservator under sections 525.539 to 525.705.

(b) The court shall grant the specific powers that are necessary for the commissioner to act as public guardian or conservator on behalf of the ward or conservatee.

Subd. 6. **Notice of order; appeal.** A copy of the order shall be served by mail upon the ward or conservatee and the ward's counsel. The order must be accompanied by a notice that advises the ward or conservatee of the right to appeal the guardianship or conservatorship appointment within 30 days.

Subd. 7. Letters of guardianship. Letters of guardianship or conservatorship must be issued by the court and contain:

- (1) the name, address, and telephone number of the person delegated by the commissioner to act as the guardian or conservator;
- (2) the name, address, and telephone number of the ward or conservatee; and
- (3) the powers to be exercised on behalf of the ward or conservatee.

The letters must be served by mail upon the ward or conservatee, the ward's counsel, the commissioner, and the local agency.

Subd. 8. Dismissal. If upon the completion of the hearing and consideration of the record, the court finds that the proposed ward is not mentally retarded or is mentally retarded but not in need of the supervision and protection of a conservator or guardian, it shall dismiss the application and shall notify the proposed ward, the ward's counsel, and the petitioner.

History: 1987 c 185 art 1 s 21

252A.11 [Repealed, 1987 c 185 art 2 s 5]

252A.111 POWERS AND DUTIES OF PUBLIC GUARDIAN OR CONSERVATOR.

Subdivision 1. General. Except as otherwise provided in this section, section 525.56, subdivisions 1 to 3, apply to the powers and duties of a public guardian or conservator.

Subd. 2. Additional powers. In addition to the powers contained in section 525.56, subdivision 3, the powers of a public guardian or those that the court may grant to a public conservator include:

- (1) the power to permit or withhold permission for the ward to marry;
- (2) the power to begin legal action or defend against legal action in the name of the ward; and
- (3) the power to consent to the adoption of the ward as provided in section 259.24.

Subd. 3. Special treatment services. The public guardian shall obtain the concurrence of the local agency and the chief executive officer or designee of the hospital before a ward may receive outpatient services or temporary care from a regional treatment center. The ward may not receive these services or care for a period exceeding 90 days in any calendar year unless the ward is committed under chapter 253B. Services must be provided under an individual service plan and individual habilitation plan as required under rules of the commissioner. The plans must be completed within ten working days of the first admission in the calendar year.

Subd. 4. Appointment of guardian or conservator of the estate. If the ward has a personal estate beyond that which is necessary for the ward's personal and immediate needs, the commissioner shall determine whether a guardian of the estate has been appointed for the ward. If no guardian of the estate has been appointed, the commissioner, after consulting with the parents, spouse, or nearest relative of the ward, may petition the probate court for the appointment of a private guardian or conservator of the estate of the ward.

Subd. 5. Local agencies. The commissioner may carry out the powers and duties prescribed by this chapter directly or through local agencies.

Subd. 6. Special duties. In exercising powers and duties under this chapter, the commissioner shall:

- (1) maintain close contact with the ward, visiting at least twice a year;
- (2) prohibit filming a ward in any way that would reveal the identity of the ward unless the commissioner determines the filming to be in the best interests of the ward. The commissioner may give written consent for filming of the ward after permitting and encouraging input by the nearest relative of the ward;
- (3) take actions and make decisions on behalf of the ward that encourage and allow

the maximum level of independent functioning in a manner least restrictive of the ward's personal freedom consistent with the need for supervision and protection; and

(4) permit and encourage maximum self-reliance on the part of the ward and permit and encourage input by the nearest relative of the ward in planning and decision making on behalf of the ward.

History: 1987 c 185 art 1 s 22; 1988 c 532 s 10

252A.12 APPOINTMENT OF CONSERVATOR NOT A FINDING OF INCOMPETENCY.

An appointment of the commissioner as conservator shall not constitute a judicial finding that the mentally retarded person is legally incompetent except for the restrictions which the conservatorship places on the conservatee. The appointment of a conservator shall not deprive the conservatee of the right to vote.

History: 1975 c 208 s 12

252A.13 [Repealed, 1987 c 185 art 2 s 5]

252A.14 COMMISSIONER AS ADVISOR.

The commissioner, acting through the local agency, shall seek out those mentally retarded persons who are in need of guardianship and shall advise them as to the availability of suitable services and assistance. The provision of advice and guidance may be made without prior appointment by a court and shall not be dependent upon a finding of incompetency. The provision of services by the commissioner does not authorize the care, treatment, supervision, or any control over any mentally retarded person.

History: 1975 c 208 s 14; 1987 c 185 art 1 s 23

252A.15 [Repealed, 1987 c 185 art 2 s 5]

252A.16 ANNUAL REVIEW.

Subdivision 1. Review required. The commissioner shall provide an annual review of the physical, mental, and social adjustment and progress of every ward and conservatee. A copy of this review shall be kept on file at the department of human services and may be inspected by the ward or conservatee, the ward's or conservatee's parents, spouse, or relatives and other persons who receive the permission of the commissioner. The review shall contain information required under rules of the commissioner.

Subd. 2. Assessment of need for continued guardianship. The commissioner shall annually review the legal status of each ward in light of the progress indicated in the annual review. If the commissioner determines the ward is no longer in need of public guardianship or conservatorship or is capable of functioning under a less restrictive conservatorship, the commissioner or local agency shall petition the court pursuant to section 252A.19 to restore the ward to capacity or for a modification of the court's previous order.

History: 1975 c 208 s 16; 1984 c 654 art 5 s 58; 1986 c 444; 1987 c 185 art 1 s 24

252A.17 EFFECT OF SUCCESSION IN OFFICE.

The appointment by the court of the commissioner of human services as public conservator or guardian shall be by the title of the commissioner's office. The authority of the commissioner as public conservator or guardian shall cease upon the termination of the commissioner's term of office and shall vest in a successor or successors in office without further court proceedings.

History: 1975 c 208 s 17; 1984 c 654 art 5 s 58; 1986 c 444; 1987 c 185 art 1 s 25

252A.171 TRANSFER OF VENUE.

Section 525.57 applies to the transfer of venue in proceedings under this chapter.

Notice of a transfer of venue petition must be given to the persons and in the manner required by section 252A.081.

History: 1987 c 185 art 1 s 26

252A.18 [Repealed, 1987 c 185 art 2 s 5]

252A.19 MODIFICATION OF CONSERVATORSHIP; RESTORATION TO LEGAL CAPACITY.

Subdivision 1. Commissioner to serve. The commissioner shall serve as public guardian or conservator with all the powers awarded pursuant to the guardianship or conservatorship, until termination or modification by the court.

Subd. 2. Petition. The commissioner, ward, or any interested person may petition the appointing court or the court to which venue has been transferred for an order to remove the guardianship or to limit or expand the powers of the conservatorship or to appoint a guardian or conservator under sections 525.539 to 525.705 or to restore the ward or conservatee to full legal capacity or to review de novo any decision made by the public guardian or public conservator for or on behalf of a ward or conservatee or for any other order as the court may deem just and equitable.

Subd. 3. Notice of time and place. Upon the filing of the petition the court shall fix the time and place for the hearing. Notice of the filing of the petition and of the hearing shall be provided in the manner set forth in section 252A.081.

Subd. 4. The commissioner shall, at the court's request, arrange for the preparation of a comprehensive evaluation of the ward or conservatee.

Subd. 5. Upon proof of the allegations of the petition the court shall enter an order removing the guardianship or limiting or expanding the powers of the conservatorship or restoring the ward or conservatee to full legal capacity or may enter such other order as the court may deem just and equitable.

Subd. 6. The county attorney may attend the hearing and may oppose the petition in the probate or county court and in the appellate courts if the county attorney deems it for the best interest of the public.

Subd. 7. The attorney general may appear and represent the commissioner in such proceedings. The commissioner shall support or oppose the petition if the commissioner deems such action necessary for the protection and supervision of the ward or conservatee.

Subd. 8. In all such proceedings, the conservatee or ward shall be afforded an opportunity to be represented by counsel, and if neither the conservatee or ward nor others provide counsel the court shall appoint counsel to represent the conservatee or ward.

Subd. 9. Costs for private guardianship. In proceedings where private guardianship or conservatorship is being sought under sections 525.539 to 525.705, costs are reimbursable under section 525.703, subdivision 3, paragraph (b).

History: 1975 c 208 s 19; 1986 c 444; 1987 c 185 art 1 s 27-30

252A.20 COSTS OF HEARINGS.

Subdivision 1. Witness and attorney fees. In each proceeding under sections 252A.01 to 252A.21, the court shall allow and order paid to each witness subpoenaed the fees and mileage prescribed by law; to each physician, psychologist, or social worker who assists in the preparation of the comprehensive evaluation and who is not in the employ of the local agency, state department of human services, or area mental health-mental retardation board, a reasonable sum for services and for travel; and to the ward's counsel, when appointed by the court, a reasonable sum for travel and for each day or portion of a day actually employed in court or actually consumed in preparing for the hearing. Upon order the county auditor shall issue a warrant on the county treasurer for payment of the amount allowed.

Subd. 2. When the settlement of the ward is found to be in another county, the court shall transmit to the county auditor a statement of the expenses incurred pursuant to subdivision 1. The auditor shall transmit the statement to the auditor of the county of the ward's settlement and this claim shall be paid as other claims against that county. If the auditor to whom this claim is transmitted denies the claim, the auditor shall transmit it, together with the objections thereto, to the commissioner, who shall determine the question of settlement and certify findings to each auditor. If the claim is not paid within 30 days after such certification, an action may be maintained thereon in the district court of the claimant county.

Subd. 3. Whenever venue of a proceeding has been transferred under sections 252A.01 to 252A.21, the costs of such proceedings shall be reimbursed to the county of the ward's settlement by the state.

History: 1975 c 208 s 20; 1984 c 654 art 5 s 58; 1986 c 444; 1987 c 185 art 1 s 31

252A.21 GENERAL PROVISIONS.

Subdivision 1. **Appeal.** The commissioner may appeal from an order of the court entered under sections 252A.01 to 252A.21 to the court of appeals in the manner prescribed by sections 525.71 to 525.731, for appeals by the state. Any persons, other than the commissioner, aggrieved by an order of the court entered under sections 252A.01 to 252A.21, may appeal to the court of appeals in the manner prescribed by sections 525.71 to 525.731.

Subd. 2. **Rules.** The commissioner shall adopt rules to implement this chapter. The rules must include standards for performance of guardianship or conservatorship duties including, but not limited to: twice a year visits with the ward; quarterly reviews of records from day, residential, and support services; a requirement that the duties of guardianship or conservatorship and case management not be performed by the same person; specific standards for action on "do not resuscitate" orders, sterilization requests, and the use of psychotropic medication and aversive procedures.

Subd. 3. Whenever the term "guardian" is used in sections 252A.01 to 252A.21, it shall include "conservator," and the term "ward" shall include "conservatee" unless another intention clearly appears from the context.

Subd. 4. Nothing in sections 252A.01 to 252A.21 shall impair the right of individuals to establish private guardianships or conservatorships in accordance with applicable law.

History: 1975 c 208 s 21; 1983 c 247 s 105; 1985 c 248 s 70; 1986 c 444; 1987 c 185 art 1 s 32