Guardianship Services Manual

Division of Aging and Adult Services Manual

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I. Introduction

Guardianship involves the provision of services to individuals who are alleged to be incompetent and their families. It includes legal proceedings in which an adult is declared incompetent by the court and another party is given responsibility for duties relative to the adult's personal affairs and/or property. The nature and scope of a guardian's responsibility are determined by the court, based on applicable provisions of the law and the circumstances of the individual case. Guardianship ends with the death of the incompetent adult or with a judicial restoration of the adult's competency.

The legal determination that an adult is incompetent means that the adult is considered incapable of making important decisions concerning his/her personal welfare and/or financial resources. Authority may be given to a guardian to make decisions such as where the adult will live, including the geographical area and type of living arrangement; how the adult's income will be spent; and whether the adult will have recommended medical treatment or surgery. To the extent that the guardian is given authority over these and other areas of the adult's life, the adult no longer has the right to make decisions in those areas. Because of the effect of declaring an adult legally incompetent and giving his/her authority to make decisions to a guardian, guardianship should be considered only when other, less drastic methods of assisting adults are not sufficient.

An incompetent adult's relatives, and others personally concerned with the adult's welfare, should be encouraged to assume primary responsibility for planning for guardianship. The agency's role should include providing information about guardianship and alternatives to guardianship to help the family in deciding on the most appropriate course of action; providing specific information about what is expected of a guardian and helping the family to determine which family member should serve as guardian; assisting the family in initiating and participating in the guardianship court proceedings when the family's decision is to pursue guardianship; and acting as an ongoing resource to the family when assistance is needed in implementing and carrying out the court's guardianship order.

The county department of social services and other local human services agencies may assume one or more roles in a guardianship case, i.e. petitioner, designated agency, guardian. There are different statutory responsibilities relative to each of these roles. Also, if a director or assistant director of a county department of social services or other local human services agency is appointed guardian, there is a statutory authorization and requirement to serve.

Chapter 35A of the General Statutes contains North Carolina's laws dealing with the adjudication of incompetency, a prerequisite for appointment of a guardian. Subchapter I of Chapter 35A contains procedures for the adjudication of incompetence. Provisions for

appointment of a guardian(s) and the powers and duties of the guardian(s) are contained in Subchapter II.

It is important to be knowledgeable about the guardianship laws in order to use them appropriately in providing assistance to incompetent adults and their families and to understand and carry out the responsibilities local human service agencies may have in providing guardianship services. The relevant statutes should be reviewed in preparation for providing guardianship services.

In addition to the requirements in the guardianship law, the Department of Health and Human Services has established rules regarding the responsibilities of human services agencies in pursuing guardianship and in serving as guardian. Local human services agencies, including county departments of social services, area mental health agencies, local health departments, and county departments of aging must comply with these rules when petitioning for guardianship and when appointed to serve as guardian.

This manual chapter contains statutory requirements, state policies and social work practice guidelines to be used when providing guardianship services. Appendices following the manual chapter contain resource information for use by local human service agencies.

II. Planning for Guardianship and Guardianship Proceedings

A. Population Covered by Guardianship Law

1. Statutory Requirement

Under G.S. Chapter 35A, proceedings for adjudication of incompetence and appointment of a guardian may be brought for incompetent adults and children at least age 17 ½ and incompetent by reason other than their minority. Incompetency is defined in G.S. 35A-1101(7)(8). (See Paragraph B.1.a. below.)

2. State Policy

None

3. Social Work Practice Guidelines

Although G.S. Chapter 35A deals primarily with guardianship for adults, it may also be used to petition for a guardian to be appointed for an incompetent minor. A guardianship petition for adjudication of incompetence and appointment of a guardian may be filed for an incompetent minor who is within six months of his/her eighteenth birthday (See G.S. 35A-1105). This may be helpful in planning for an incompetent child who will need a guardian as an adult. Initiating the proceeding before the person's eighteenth birthday would enable a guardian to be appointed and assume responsibility when the person becomes eighteen. This would prevent a gap in decision-making authority for the person which may otherwise occur if the proceeding is not initiated until the person's eighteenth birthday.

B. Criteria for Determining Whether or Not A Guardian Is Needed

In evaluating whether to pursue guardianship for an adult or an incompetent minor who is within six months of his/her eighteenth birthday, the following issues should be considered. The results of the review of each of these issues should be documented.

1. Definition of Incompetency

a. Statutory Requirement

"The term 'incompetent adult' means an adult or emancipated minor who lacks sufficient capacity to manage the adult's own

affairs or to make or communicate important decisions concerning the adult's person, family, or property whether the lack of capacity is due to mental illness, mental retardation, epilepsy, cerebral palsy, autism, inebriety, senility, disease, injury, or similar cause or condition. [G. S. 35A-1101(7)]

The term 'incompetent child' means a minor who is at least 17 ½ years of age and who, other than by reason of minority, lacks sufficient capacity to make or communicate important decisions concerning the child's person, family, or property whether the lack of capacity is due to mental illness, mental retardation, epilepsy, cerebral palsy, autism, inebriety, disease, injury, or similar cause or condition". [G.S. 35A-1101(8)]

b. State Policy

None

c. Social Work Practice Guidelines

(1) The statutory definitions of incompetency and of conditions which may cause incompetency should be reviewed to determine whether the person meets the criteria. See pages 1 and 2 of Appendix A for statutory definitions of conditions which may cause incompetency.

(2) When the person does not meet the criteria in the applicable statutory definition of incompetency, guardianship should not be pursued. Depending on the person's needs and circumstances, one or more of the following may be an appropriate means of assistance:

(a) Assumption of increased responsibility by family members and/or other service providers to assist the person with day-to-day living and with management of financial matters;

(b) Execution of a power of attorney (for more information on powers of attorney see section 6670);

(c) Establishment of a special bank account (joint bank account requiring two signatures, direct deposit of

benefit checks, automatic drafts to a specified party);

(d) Appointment of a payee by a government agency to handle financial benefits coming from that agency.

2. Alternatives to Guardianship

a. Statutory Requirement

None

b. State Policy

None

c. Social Work Practice Guidelines

Before initiating a petition for adjudication of incompetence for a person who meets criteria in the applicable statutory definition of incompetency, careful consideration should be given as to whether the person's need for assistance can be met through other means. Proceedings for adjudication of incompetence and appointment of a guardian should be initiated only when other less restrictive forms of intervention for an incompetent person are determined to be inappropriate or inadequate. The appropriate use of alternatives to guardianship depends on the nature of the incompetent person's abilities and limitations, income and resources. Some alternatives to guardianship and examples of circumstances in which each may be appropriate include:

(1) Appointment of a payee to handle financial benefits coming from a government agency.

If the person's only income is Social Security or public assistance, a substitute payee may be appointed to manage the assistance payment. This may be the only intervention needed for a person who is able to take care of personal needs; however, if the person requires more assistance and oversight, a guardian of the person may be needed in addition to a substitute payee. (See Subsection C.3.a of this section, for information about guardians of the person.)

(2) The Adult Protective Services law (G.S. 108A, Article 6) to authorize provision of needed essential services on a short-term basis.

This law provides a mechanism for quick intervention for disabled adults who have been abused, neglected or exploited. Essential services which may be provided to disabled adults in need of protection include "social, medical, psychiatric, psychological or legal services necessary to safeguard the disabled adult's rights and resources and to maintain the physical or mental well-being of the individual". [G.S. 108A-101(i)]. Such services may be provided with the adult's consent or, if the adult lacks the capacity to consent, under a court order which is in effect for 60 days and may be extended an additional 60 days for good cause shown. (See Chapter VII, Volume V of the Family Services Manual for information about Adult Protective Services.)

If an adult's incompetency results from a condition which may be corrected or improved with the provision of services, i.e. medical treatment, better nutrition, drug management, etc., and if the adult is disabled and has been abused, neglected or exploited, it may be appropriate for initial intervention to be through the adult protective services law.

If incompetency results from a condition which is long-term and unlikely to improve (i.e. Alzheimer's disease), it may be more appropriate to initiate a guardianship proceeding.

In such instances, if the adult needs immediate assistance to protect his/her person or property, Interim Guardianship may be an appropriate means to address the adult's need for assistance rather than filing petitions for both protective services and guardianship. (See Subsection F of this section for information about Interim Guardianship.) Consideration should be given to whether the adult has income which could not be handled by a payee and/or property which needs to be protected and/or managed. The adult protective services law does not provide a basis for anyone to assume control over an adult's financial

resources. Therefore, guardianship may be pursued in any instance in which an incompetent adult needs someone to manage his/her estate. Interim guardianship may be needed in situations where property/income needs to be protected/managed on an emergency basis.

(3) Advance directives may be an alternative to guardianship. These legal documents give competent individuals the opportunity to plan for future incapacity and designate surrogate decision makers who will carry out their personal and business affairs as they wish them carried out. These directives include, the durable power of attorney, health care power of attorney, the advance instruction for mental health treatment, and the Living Will. These documents may be used to assist adults whose incapacity is not long term and can be improved with medical care, diet, etc. It is important to remember that adults must be competent to designate an advance directive. (See to Section 6670, Alternatives and Supplements for more information about advance directives.)

C. Development of a Guardianship Plan

A written guardianship plan may be developed prior to initiating a petition for adjudication of incompetency and appointment of a guardian. The plan should describe the person's mental and physical condition, recommended type of guardianship (see paragraph 3. of this section for information about types of guardianships), scope of the guardian's authority to best meet the person's needs without assuming any more control than necessary, and the most appropriate party to serve as guardian. The plan should be developed in consultation with family members when possible and with input from any other community agencies involved in providing services to the person.

1. Review of Person's Mental and Physical Condition

a. Statutory Requirement

None

b. State Policy

None

c. Social Work Practice Guidelines

A review should be made of the person's mental and physical condition, focusing on his ability to be responsible for personal welfare and to manage financial affairs.

Based on this review, a determination should be made of the extent to which the person is able to be responsible for decisions about his personal welfare. If the person needs assistance in this area, the type and degree of assistance needed should be noted in the guardianship plan. For example, the person may be able to make decisions about daily living needs, but not about medical care and treatment. Information about the person's mental abilities and limitations will be needed for the petition.

If there is any question about the nature or degree of the person's abilities and limitations, a multidisciplinary evaluation should be requested. The request for a multidisciplinary evaluation is made in writing to the clerk of court at the time of or within ten days after a guardianship petition is filed. (See Subsection D.4. of this section for information about multidisciplinary evaluations.)

When it is decided that a multidisciplinary evaluation should be requested, the written guardianship plan should include this recommendation.

2. Examination and Inventory of Person's Financial Resources

a. Statutory Requirement

None

b. State Policy

None

c. Social Work Practice Guidelines

A review should be made to determine the nature and extent of the person's financial resources. All property owned by the person should be identified and inventoried. The inventory should include an itemized description of all property, its location and value. The amount and sources of income and any other financial resources should be identified and noted.

An inventory of the person's assets is necessary to assist the petitioner in determining whether a guardian will be needed to manage extensive resources, or whether other alternatives may be more appropriate. If it is determined that the person has extensive financial assets and the person is not capable of managing these assets, a guardian of the estate may be appropriate. Knowledge of the person's assets is also necessary for the petition which requires a general statement of the person's assets. This statement will be reviewed by the clerk in determining what kind of guardianship is needed.

In most instances the location and value of real property is a matter of public record. Inquiries should be made of the county tax office and/or register of deeds office in the county where the property is located. If the property is out of state, the appropriate authorities in that state should be contacted.

The value of tangible personal property (i.e. furnishings, jewelry, automobiles) can be obtained by contacting a professional appraiser of such items. In instances where an appraisal cannot be made, a list of the property with an estimate of its value may be sufficient for the petition. A more accurate inventory of the personal property may be done at the time of the 90 day accounting to the clerk.

In instances where resources are known to exist but cannot be verified, such as bank accounts or trust accounts, because of a lack of legal authority to access this information, an estimate may be sufficient for the petition. Once a guardian of the estate/general guardian is appointed, the guardian will have authority to obtain this information.

A determination should be made of the extent to which the person can manage his own financial resources based on this review and inventory and the review of the person's mental and physical condition. If the person needs assistance in managing his estate, the type and degree of assistance needed should be noted in the guardianship plan. For example, a person may be able to be responsible for a small amount of money on a weekly basis to purchase food and personal items, but may need someone to assume responsibility to pay for housing, medical care, and other expenses.

3. Types of Guardianship Which May Be Requested

a. Statutory Requirement

There are three types of guardians: guardian of the person, guardian of the estate and general guardian.

(1) A guardian of the person is appointed "solely for the purpose of performing duties related to the care, custody and control of a ward". [G.S. 35A-1202(10)]

(2) A guardian of the estate is appointed "solely for the purpose of managing the property, estate and business affairs of a ward." [G.S. 35A-1202(9)]

(3) 'General guardian' means a guardian of both the estate and the person. [G.S. 35A-1202(7)]

(4) The clerk of court may also order that a limited guardian be appointed. If the clerk orders a limited guardianship as authorized in [G. S. 35A-1212(a)] the clerk may order that the ward retain certain legal rights and privileges to which the ward was entitled before the ward was adjudged incompetent. [G. S. 35A-1215(b)]

b. State Policy

None

c. Social Work Practice Guidelines

The guardianship statute authorizes the clerk of court to order that a guardianship be limited based on the strengths and limitations of the adult. This allows the ward to retain certain legal rights and privileges held prior to the adjudication of incompetence. This also limits the guardian's decision making authority to only those areas where the ward lacks the capacity to make and communicate important decisions.

The type of guardianship that should be recommended for an adult depends on the nature and extent of the adult's capacity to make and communicate decisions about the adult's person and/or financial affairs. Guardianships should be tailored to meet the specific needs of the adult and should not be a "one size fits all"

approach. If an adult lacks the capacity to make and communicate decisions in all areas, he or she may benefit from a plenary (full) guardianship. However, every attempt should be made to maximize the rights of the adult by allowing the adult to retain as much control over decision making as is reasonable and appropriate.

The new form, AOC-SP-208, Guardianship Capacity Questionnaire, may assist in gathering information about the adult's functional abilities, strengths and limitations. The Questionnaire does not replace any other tools or assessments that may assist with determining the level of the adult's functioning. The Questionnaire may also assist with determining whether less intrusive alternatives than guardianship, such as, durable power of attorney, health care power of attorney, representative payee, may be more appropriate to meet the adult's needs. The Questionnaire lists several areas of domains, such as, language and communication, nutrition, independent living, financial, personal hygiene, and personal safety that are to be assessed to determine the adult's functional capacity. For more information about the Guardianship Capacity Questionnaire, refer to D.2., Petition and to Appendix B.

A guardianship may be limited at the time a petition for the adjudication of incompetence is filed. The petition should indicate those areas where the adult lacks the capacity to make and communicate decisions or manage his or her own affairs. These are the areas where the adult will retain certain legal rights and privileges to make and communicate his or her own decisions. The petition should also indicate those areas where the adult will require a guardian to make and communicate decisions on his or her behalf. These are the areas the guardian will have decision making authority.

A guardianship may also be modified after the appointment to restore more rights to the ward, and limit the powers and duties of the guardian. To modify a guardianship after the appointment, a motion in the cause may be filed with the clerk having jurisdiction in the matter. The motion must indicate the specific areas where the ward has the capacity to make and communicate decisions, and those areas where the adult continues to require a surrogate decision maker. For example, the ward may have regained the

capacity to make and communicate important decisions about her basic needs, where she will live, and with whom she will associate, but continues to require a guardian to make decisions about medical care.

A functional assessment of an individual's capacity should assist with determining what type of guardianship is appropriate to meet his or her needs, allowing the guardianship to be "tailored to fit the individual". A functional assessment of an adult's capacity provides a clearer picture of what he or she can and cannot do than does a general diagnosis statement from a physician.

An adult may benefit from a limited guardianship of the person, or a limited guardianship of the person and a full guardianship of the estate. An adult may benefit from a guardian of the person and the estate. There may be two separate guardians appointed or one person to act as a general guardian. There are a number of ways the guardianship may be tailored to benefit the adult.

When determining the type of guardianship that will benefit the adult consideration should be given to:

- The adult's cognitive functioning.
  Does the adult possess the intellectual ability to make and communicate important decisions about the adult's person, family or property? For example, does the adult have a mental health disorder or disability that interferes with his or her understanding or reasoning ability to make and communicate decisions?

- The adult's functional capacity.
  Does the adult have deficits in functioning (social, mental, physical, ADLs/IADLs, environment, economic)? To what extent do the deficits affect the adult's ability to manage personal and financial affairs, and make and communicate important decisions?

- The adult's current condition or status.
  Does the adult have a diagnosis as determined from the areas above that currently impairs his or her ability to make and communicate important decisions or manage person or affairs? Does the diagnosis continue to impair the adult's ability to make and communicate decisions or manage his

or her person after services, treatment, rehabilitation, etc. have been provided?

It is important to remember that "guardianship should seek to preserve for the incompetent person the opportunity to exercise those rights that are within his comprehension and judgment, allowing for the possibility of error to the same degree that is allowed to persons who are not incompetent". Individuals who have been adjudicated incompetent should be allowed to retain as many of their rights as is reasonable, and the guardian should advocate for their right to exercise those rights. [G. S. 35A-1201(5)]

(1) A guardian of the person should be recommended for an incompetent adult who needs someone to make decisions about such issues as living arrangements, professional care and treatment (medical, psychiatric care, etc.), and other services which may be needed for the adult's welfare.

(2) A guardian of the estate should be recommended when an adult needs someone to manage property and income.

(3) In deciding to recommend a general guardian for an adult who needs someone to act for him in both areas, consideration should be given to whether there is a party available to act as guardian who is capable of making knowledgeable, informed decisions about both the adult's personal welfare and his income and property, or whether separate guardians should be appointed.

(4) A limited guardianship should be recommended when the adult has the capacity to make and communicate decisions in certain areas and not in other areas. For example, an adult may be capable of making decisions about daily basic needs, but not capable of making and communicating important decisions about medical care and treatment. The adult may benefit from a limited guardianship of the person. If this adult also lacks the capacity to make decisions about financial affairs, and the adult's only income consists of benefits that can be managed by a substitute payee, the adult will not need a guardian of the estate. If the adult's income is such that it cannot be managed by a substitute payee, the adult may benefit from a
guardian of the estate, and a limited guardian of the person.

4. Scope of Guardian's Authority

a. Statutory Requirement

The guardian's authority as prescribed in law is outlined in Section 6620, Powers and Duties of the Guardian.

b. State Policy

None

c. Social Work Practice Guidelines

The recommended authority of the guardian should be limited to those areas in which the adult is incapable of making and communicating responsible decisions. In effect, the transfer of decision-making authority to a guardian means that the adult no longer has rights in those areas. Although the ward may not retain certain legal rights, the guardian is authorized to afford the ward the opportunity to exercise those rights that are within the ward's comprehension and judgment. The guardian is also authorized to provide the ward the opportunity to participate in all decisions affecting the ward. Examples of authority that may be given to a guardian are listed below. For detailed information about the authority and responsibility of guardians, see Section 6620.

(1) Guardian of the Person

(a) Deciding where the ward will live, including the geographic area and type of living arrangement, i.e. private home, apartment, domiciliary care facility, etc.

(b) Making decisions about medical care and treatment including surgery, and other types of professional care and services.

(2) Guardian of the Estate

Authority to manage the ward's income, including purchasing personal belongings, purchase and sale of real property, etc.

(3) General Guardian
All of the above

(4) Limited Guardian

Authority is limited to those areas the clerk delineates in the Order on the Appointment of Guardian.

5. Recommendation of Who Should Be Appointed Guardian(s)

a. Statutory Requirement

(1) Parties That May Be Appointed

(a) "The clerk may appoint as guardian an adult individual, a corporation or a disinterested public agent. The applicant may submit to the clerk the name or names of potential guardians, and the clerk may consider the recommendations of the next of kin or other persons." [G.S. 35A-1213(a)]

(b) A nonresident of the State of North Carolina, to be appointed as general guardian, guardian of the person, or guardian of the estate of a North Carolina resident, must indicate in writing his willingness to submit to the jurisdiction of the North Carolina courts in matters relating to the guardianship and must appoint a resident agent to accept service of process for the guardian in all actions or proceedings with respect to the guardianship. Such appointment must be approved by and filed with the clerk, and any agent so appointed must notify the clerk of any change in the agent's address or legal residence. The clerk shall require a nonresident guardian of the estate or a nonresident general guardian to post a bond or other security for the faithful performance of the guardian's duties." The clerk may require a nonresident guardian of the person to post a bond or other security for the faithful performance of the guardian's duties" [G.S. 35A-1213(b)]

(c) "A corporation may be appointed as guardian only if it is authorized by its charter to serve as a guardian or in similar fiduciary capacities." [G.S. 35A-1213(c)]

(d) "A disinterested public agent who is appointed by the clerk to serve as a guardian is authorized and required to do so; provided, if at the time of the appointment or any time subsequent thereto the

disinterested public agent believes that his role or the role of his agency in relation to the ward is such that his service as guardian would constitute a conflict of interest, or if he knows of any other reason that his service as guardian may not be in the ward's best interest, he shall bring such matter to the attention of the clerk and seek the appointment of a different guardian. A disinterested public agent who is appointed as guardian shall serve in that capacity by virtue of his office or employment, which shall be identified in the clerk's order and in the letters of appointment. When the disinterested public agent's office or employment terminates, his successor in office or employment, or his immediate supervisor if there is no successor, shall succeed him as guardian without further proceedings unless the clerk orders otherwise." [G.S. 35A-1213(d)]

(2) Priorities for Appointment

"The clerk shall consider appointing a guardian according to the following order of priority: an individual; a corporation; or a disinterested public agent. No public agent shall be appointed guardian until diligent efforts have been made to find an appropriate individual or corporation to serve as guardian, but in every instance the clerk shall base the appointment of a guardian or guardians on the best interest of the ward." [G.S. 35A-1214]

(3) Disinterested Public Agent Guardians

'Disinterested public agent' means: the director, or assistant directors of a local human services agency, or an adult officer, agent, or employee of a State human services agency. The fact that a disinterested public agent is employed by a State or local human services agency that provides financial assistance, services, or treatment to a ward does not disqualify that person from being appointed as guardian." [G.S. 35A-1202(4)]

(4) Mental Health Officials as Guardians

"The officials and employees of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, or any successor agency, and the area director or any officer or employee of an area authority designated by the area board, or any officer or employee of any area facility designated by the area board may, if they are a disinterested public agent as defined by G.S. 35A-1202(4), serve as guardians for adults adjudicated incompetent under the provisions of Subchapter I of Chapter 35A of the General Statutes, and they shall so act if ordered to serve in that capacity by the clerk of superior court having jurisdiction of a proceeding brought under that Subchapter." [G.S. 122C-122]

(5) DSS Directors and Assistant Directors as Guardians

"The director and assistant directors of social services of each county may serve as guardians for adults adjudicated incompetent under the provisions of Chapter 35A, and they shall do so if ordered to serve in that capacity by the clerk of the superior court having jurisdiction of a guardianship proceeding brought under that Article". [G.S. 108A-15]

b. State Policy

When a disinterested public agent is appointed to serve as a guardian by the clerk of superior court, the appointed disinterested public agent is authorized and required to serve in accordance with the clerk's order and in accordance with the guardian's letter(s) of appointment.

c. Social Work Practice Guidelines

It is important to remember the following points when providing guardianship services or when recommending potential guardians:

(1) The agency should explore the possibility of relatives, friends or neighbors who are able and willing to serve as guardian. If such individuals express reluctance or hesitancy to assume the role of guardian, it may be helpful to explain exactly what the guardian's responsibilities

would be, why it would be preferable for the guardian to be someone who is close the adult and personally concerned with his/her well-being and that the agency may be available as an ongoing support and resource for assistance with any needed services.

When the most appropriate proposed guardian resides out of state, assist the proposed guardian in identifying others (e.g. friends, neighbors or family members) to serve as resident agent who may not be willing or able to serve as guardian, but want to remain involved with the adult. If location others to serve as resident agent is a barrier to the clerk appointing a nonresident guardian, you may volunteer to serve in this capacity to facilitate the guardianship appointment.

The resident agent serves as the intermediary between the clerk of court and the nonresident guardian. The resident agent's duties are limited to forwarding pleadings (notifying the nonresident guardian of all citations, notices, and processes) served on the resident agent. The resident agent's duties do not involve monitoring the nonresident guardian to ensure the court maintains contact; making quarterly visits with the ward to ensure the nonresident guardian is meeting the ward's needs; acting as co-guardian; or assuming any powers and duties outlined in Article 8, Powers and Duties of Guardian of the Person, or in Article 9, Powers and Duties of Guardian of the Estate.

Discuss these recent changes with the clerk of court to better understand the duties of the resident agent.

(2) In some communities a corporation may be established for the purpose of serving as guardian for persons who are incompetent because of a certain condition, i.e. mental retardation. Such corporations may serve as guardian of the person, guardian of the estate or general guardian and are a resource for incompetent adults in the corporation's target population who do not have family members or other concerned individuals able and willing to serve as guardian.

When a guardian of the estate is needed and the proposed ward has real property and/or other financial resources which must be managed or liquidated, the recommended guardian of the estate should be a qualified relative or individual who could retain an attorney, a corporation chartered to act in a fiduciary capacity; or an attorney. (See Section 6660 for information about private organizations established to serve as guardian.)

(3) If neither an individual nor an authorized corporation can be identified, a disinterested public agent may be recommended. As defined in law, disinterested public agents are officers, agents or employees of state and local human resources agencies including, for example, the Division of Aging and Adult Services; Division of Services for the Blind; Division of Mental Health, Developmental Disabilities and Substance Abuse Services; Division of Social Service and Division of Vocational Rehabilitation.

Local human services agencies include county health departments, area mental health centers, county departments of social services, and county departments on aging when operated as a unit of county government. The recommendation of a particular disinterested public agent to be appointed guardian should be based on the nature of the proposed ward's problems and the type of assistance needed. In determining which disinterested public agent to recommend, priority consideration should be given to the human services agency which provides services most closely associated with the proposed ward's primary needs. For example:

(a) When the adult's primary need is services to alleviate physical health problems, the director of health services for the county may be the appropriate guardian;

(b) When the adult's primary need is services to alleviate problems related to mental illness, a developmental disability or substance abuse, area or regional mental health, developmental disabilities and substance abuse services personnel may be the most appropriate guardian;

(c) When the adult's primary need is for general oversight and social services not in the areas described in (a) or (b) above, the director of social services may be the most appropriate guardian.

The recommended guardian of the estate may be an attorney or a corporation chartered to act in a fiduciary capacity. Attorneys and corporations have the knowledge, experience and resources needed to assume such responsibility. Public agencies may take on this responsibility, but should have or be able to purchase the expertise needed to manage estates in the best interest of the ward, if choosing to do so.

(4) In considering who should be recommended for appointment as guardian, consideration should be given to proximity to the proposed ward. The guardian should be nearby and available to the ward on a reasonably frequent basis. However, if family members are available and willing to serve as guardian, they should be encouraged to serve even when they may not be in close proximity to the ward. This is keeping with G. S. 35A-1214, priority for appointment of guardians. It is important to recommend family members to serve as guardians when they are available and appropriate to assume this responsibility.

(5) There are statutory provisions for funds from a ward's estate to be used to pay expenses in carrying out guardianship duties and to pay a commission for the guardian's management of the ward's resources. It may be helpful for potential guardians to be informed that they may receive compensation for their services as provided for in law when a ward's estate is large enough to support such compensation. Information about payment for expenses and fees for management of the estate is contained in Section 6620.

D. Proceedings to Determine Incompetence

1. Venue

a. Statutory Requirement

(1) Venue for adjudication of incompetence is in the county where the respondent (person alleged to be incompetent) resides or is domiciled or is an inpatient in a treatment facility. If the county of residence or domicile cannot be determined, venue is in the county where the respondent is present. [G.S. 35A-1103(b)]

A treatment facility "has the same meaning as 'facility' in G.S. 122C-3(14), and includes group homes, halfway houses, and other community based-residential facilities." [G.S. 35A-1101(16)] G.S. 122C-3(14) is in Appendix I of this manual chapter.

(2) "The clerk, on motion of a party or the clerk's own motion, may order a change of venue upon finding that no hardship or prejudice to the respondent will result from a change of venue." [G.S. 35A-1104]

b. State Policy

None

c. Social Work Practice Guidelines

The adjudication of incompetency may be made in one county, and the appointment of a guardian and the jurisdiction over the guardianship may be transferred to a different county. See paragraph E, in this subsection for information about venue for appointment of a guardian.

Questions often arise concerning which agency should petition for the adjudication of incompetence for a respondent who is in a facility in a county different from the county where legal residency was established. The respondent may also be receiving Medicaid and/or State/County Special Assistance (SA) from the county of residence. The guardianship law clearly states that either is appropriate since venue may be where the respondent resides, is

domiciled or is in a treatment facility. G.S. 153A-257 addresses the issue of which county DSS is responsible for the provision of social services. If an individual resides in a facility (i.e. hospital, mental institution, nursing home) he does not "solely because of that fact" have legal residence in the county in which the facility is located. While the client's residence does not automatically change because he has been placed in a facility in another county, this move does not preclude him from changing his residency. If his intent is to remain in the facility, then for the purposes of guardianship, both his place of domicile and his residency are in the county where the facility is located. A petition for incompetence may be filed in that county regardless of where the assistance payments are coming from. The following considerations may be helpful when deciding which county should petition the court:

- The county where the respondent is located is usually the county where all of the evidence (i.e. medicals and/or psychological information) is found documenting the need for guardianship.

- The respondent has a legal right to be present at the hearing on the adjudication of incompetency. Filing a petition in another county and having the hearing in that county may prevent the respondent from exercising that right.

- The respondent has a right to be represented at the hearing by his own counsel or an appointed guardian ad litem. The counsel is expected to visit with the respondent prior to the hearing to be able to adequately represent the respondent at the hearing. Filing the petition in another county may make it difficult for counsel to adequately represent the respondent.

It is important to remember that although the county where the respondent is in the facility may petition, this does not eliminate the county where the Medicaid and SA benefits are being sent from cooperating with the petitioning county in the provision of guardianship services for the respondent. Refer to Section 6620, A. 5 for more information on intercounty cooperation.

The ultimate consideration in determining which county would be more appropriate to petition is not only legal residency but which

county can best serve the needs of the respondent. The county which can best serve the needs of the respondent may be the county in close proximity to the respondent rather than the county which manages the Medicaid and SA payments.

2. Petition

a. Statutory Requirement

"A verified petition may be filed with the clerk by any person, including any State or local human services agency through its authorized representative" [G.S. 35A-1105]. The petition must include, to the extent known, the following information:

(1) The name, age, address, and county of residence of the adult;

(2) The name, address and county of residence of the petitioner, and his interest in the proceeding;

(3) A general statement of the adult's assets and liabilities with an estimate of the value of any property, including any compensation, insurance, pension, or allowance to which the adult is entitled;

(4) A statement of the facts tending to show that the adult is incompetent and the reasons that the adjudication of incompetence is sought;

(5) The name, address and county of residence of the adult's next of kin and other persons known to have an interest in the proceeding. [G.S. 35A-1106(1-5)]

(6) Facts regarding the adjudication of incompetence by a court of another state, if an adjudication is sought on that basis pursuant to G.S. 35A-1113(1). [G.S. 35A-1106(6)]

b. State Policy

None

c. Social Work Practice Guidelines

(1) Once it is determined that evidence exists alleging the adult to be incompetent and in need of a guardian, a Petition for Adjudication of Incompetence and Application for Appointment of a Guardian or Limited Guardian and Interim Guardian (AOC-SP-200) should be filed with the clerk of superior court. See Appendix B for link to AOC forms. Whenever family members are able and willing to do so, they should be encouraged and assisted to act as the petitioner.

The statute does not require local human services agencies, including county departments of social services, area mental health programs, local health departments, and county departments of aging to file guardianship petitions. Guardianship petitions may be filed by anyone with the clerk of court having jurisdiction in the matter.

(2) The following additional information should accompany the petition:

Any information available to determine the functional capacity of the proposed ward and to make decisions about what restrictions and freedoms the proposed ward should have, including:

(a) A statement about the proposed ward's capabilities;

(b) Recommendations on the types of decision(s) over which the ward should be allowed to retain power;

(c) Recommendations about whether a guardian and ward should share decision-making authority (i.e. mutual veto or check and balance) with respect to selected areas of life functions or all areas of life functions;

(d) A motion for multidisciplinary evaluation, if there is any question about the nature or degree of the proposed ward's abilities and limitations. (See Paragraph 4, Multidisciplinary Evaluation of this subsection).

(e) The Guardianship Capacity Questionnaire (AOC-SP-208) may also be completed and filed along with the Petition. This form was developed to assist the petitioner, the guardian ad litem and others who are considering filing a petition when determining whether to request limited guardianship. The form allows one to gather and document information about the respondent's functional capacity in several domains. This information will assist the clerk of court in determining what legal rights and privileges the ward should retain if adjudicated incompetent. Refer to Appendix B for a link to this AOC form.

(3) In preparing the petition, consideration should be given as to who should be available to testify at the hearing in addition to the petitioner. It may be helpful to have at the hearing persons such as the proposed ward's physician, a psychologist or psychiatrist who is knowledgeable about the proposed ward's mental status and others who could testify in support of the petition.

Persons who are needed as witnesses should be contacted to determine their willingness to attend the hearing. If someone refuses and his testimony is considered essential, it should be explained that he may be subpoenaed to appear.

A subpoena is a written legal order directing an individual to appear in court to give testimony and/or show specified records. A subpoena is issued by the clerk of court and may be served by the sheriff's department or by any adult who is not a party to the proceeding.

When a subpoena is issued for a physician, the physician's medical record on the adult should also be subpoenaed as the medical record constitutes important documentary evidence regarding the adult's condition.

It may be possible to use an affidavit instead of requiring a witness to testify in person. An affidavit is a written statement made under oath before a notary public. The use

of an affidavit from a witness must be agreed to by the guardian ad litem (see Paragraph 5.a. of this section for information about guardian ad litem) and any other attorney in the case.

(4) The petition should be drafted by or in consultation with the agency's attorney when the agency is the petitioner.

3. Issuance and Service of Notice

a. Statutory Requirement

(1) "Within five days after filing of the petition, the clerk shall issue a written notice of the date, time, and place for a hearing on the petition, which shall be held not less than 10 days nor more than 30 days after service of the notice and petition on the respondent, unless the clerk extends the time for good cause or for preparation of a multidisciplinary evaluation as provided in G.S. 35A-1111." [G.S. 35A-1108(a)]

(2) "If a multidisciplinary evaluation is ordered after a notice of hearing has been issued, the clerk may extend the time for hearing and issue a notice to the parties that the hearing has been continued, the reason therefore, and the date, time, and place of the new hearing, which shall not be less than 10 days nor more than 30 days after service of such notice on the respondent." [G.S. 35A-1108(b)]

(3) "Copies of the petition and initial notice of hearing shall be personally served on the respondent. Respondent's counsel or guardian ad litem shall be served pursuant to G.S. 1A-1, Rule 4, Rules of Civil Procedure. A sheriff who serves the notice and petition shall do so without demanding his fees in advance." [G.S. 35A-1109]

(4) "The petitioner, within five days after filing the petition, shall mail or cause to be mailed, by first-class mail, copies of the notice and petition to the respondent's next of kin alleged in the petition and any other persons the clerk may designate, unless such person has accepted notice. Proof of such mailing or acceptance shall be by affidavit or

certificate of acceptance of notice filed with the clerk." [G.S. 35A-1109]

(5) "The clerk shall mail, by first-class mail, copies of subsequent notices to the next of kin alleged in the petition and to such other persons as the clerk deems appropriate." [G.S. 35A-1109]

b. State Policy

None

c. Social Work Practice Guidelines

(1) The clerk is responsible for setting a date, time and place for a hearing on the petition and for issuing a written notice containing this information within five days after the petition is filed.

(2) The petitioner is responsible for sending, by first-class mail, copies of the petition and notice of the hearing to the respondent's next of kin and anyone else designated by the clerk unless this person accepted notice. This is to be done within five days after a petition is filed.

4. Multidisciplinary Evaluation

a. Statutory Requirement

(1) "To assist in determining the nature and extent of an adult's disability, or to assist in developing an appropriate guardianship plan and program, the clerk, on his own motion or the motion of any party, may order that a multidisciplinary evaluation of the adult be performed.

The request for a multidisciplinary evaluation shall be made in writing and filed with the clerk within 10 days after service of the petition on the respondent." [G.S. 35A-1111(a)]

(2) 'Multidisciplinary evaluation' means an evaluation that contains current medical, psychological, and social work evaluations as directed by the clerk and that may include

current evaluations by professionals in other disciplines, including without limitation education, vocational rehabilitation, occupational therapy, vocational therapy, psychiatry, speech-and-hearing, and communications disorders.
The evaluation is current if made not more than one year from the date on which it is presented to or considered by the court. The evaluation shall set forth the nature and extent of the disability and recommend a guardianship plan and program". [G.S. 35A-1101(14)]

(3) "If a multidisciplinary evaluation is ordered, the clerk shall name a designated agency and order it to prepare, cause to be prepared or assemble a current multidisciplinary evaluation of the respondent. The agency shall file the evaluation with the clerk not later than 30 days after the agency receives the clerk's order." [G.S. 35A-1111(b)]

(4) 'Designated agency' means the State or local human services agency designated by the clerk in the clerk's order to prepare, cause to be prepared, or assemble a multidisciplinary evaluation and to perform other functions as the clerk may order. A designated agency includes, without limitation, State, local, regional or area mental health, mental retardation, vocational rehabilitation, public health, social service, and developmental disabilities agencies, and diagnostic evaluation centers. [G.S. 35-1101(4)]

(5) "Unless otherwise ordered by the clerk, the agency shall send copies of the evaluation to the petitioner and the counsel or guardian ad litem for the respondent not later than 30 days after the agency receives the clerk's order." [G.S. 35A-1111(b)]

(6) "The evaluation shall be kept under such conditions as directed by the clerk and its contents revealed only as directed by the clerk. The evaluation shall not be a public record and shall not be released except by order of the clerk." [G.S. 35A-1111(b)]

(7) "The cost of a multidisciplinary evaluation ordered pursuant to G.S. 35A-1111 shall be assessed as follows:

(a) if the respondent is adjudicated incompetent and is not indigent, the cost shall be assessed against the respondent;

(As stated in G.S. 35A-1101(9), 'indigent' means unable to pay for legal representation and other necessary expenses of a proceeding brought under this Subchapter.")

(b) if the respondent is adjudicated incompetent and is indigent, the cost shall be borne by the Department of Health and Human Services;

(c) if the respondent is not adjudicated incompetent, the cost may be taxed against either party, apportioned among the parties, or borne by the Department of Health and Human Services, in the discretion of the court. [G.S. 35A-1116]

(8) "If a Multidisciplinary evaluation does not contain medical, psychological, or social work evaluations ordered by the clerk, the designated agency nevertheless shall file the evaluation with the clerk and send copies as required by [G.S. 35A-1111(b)]. In a transmittal letter, the agency shall explain why the evaluation does not contain such medical, psychological, or social work evaluations." [G.S. 35A-1111(c)]

(9) The clerk may order that the respondent attend a multidisciplinary evaluation for the purpose of being evaluated." [G.S. 35A-1111(d)]

b. State Policy

None

c. Social Work Practice Guidelines

(1) The request to the clerk for a multidisciplinary evaluation may be made as part of the petition or separately. The forms, Petition for Adjudication of Incompetence and Application for Appointment of a Guardian (AOC-SP-200),

or Request and Order for Multidisciplinary Evaluation (AOC-SP-901-M) may be used to request a multidisciplinary evaluation. See Appendix B for copies of these forms.

(2) The designated agency, by definition, may be any local human services agency. Because of the nature of the multidisciplinary evaluation, the area mental health, developmental disabilities and substance abuse services agency may be the appropriate local agency to be the designated agency. When the department of social services is the designated agency, assistance may be requested from the area mental health, developmental disabilities and substance abuse services agency as well as from physicians and others, in carrying out the evaluation.

5. Hearing on Petition for Adjudication of Incompetence

a. Statutory Requirement

(1) The adult is entitled to be represented by counsel of his own choice or by court-appointed guardian ad litem. Upon filing of the petition, the clerk shall appoint as guardian ad litem an attorney who shall represent the adult unless the adult retains his own counsel, in which event the clerk may discharge the guardian ad litem. [G.S. 35A-1107]

(1a) An attorney appointed as a guardian ad litem under this section shall represent the respondent until the petition is dismissed or until a guardian is appointed. After being appointed, the guardian ad litem shall personally visit the respondent as soon as possible and shall make every reasonable effort to determine the respondent's wishes regarding the incompetency proceeding and any proposed guardianship.

The guardian ad litem shall present to the clerk the respondent's express wishes at all relevant stages of the proceedings.

The guardian ad litem also may make recommendations to the clerk concerning the respondent's best wishes if those interests differ from the respondent's express wishes.

In appropriate cases, the guardian ad litem shall consider the possibility of a limited guardianship and shall make recommendations to the clerk concerning the rights, powers, and privileges that the respondent should retain under a limited guardianship. [G. S. 35A-1107(b)]

(2) "The respondent has a right, upon request by him, his counsel, or his guardian ad litem, to trial by jury. Failure to request a trial by jury shall constitute a waiver of the right. The clerk may nevertheless require trial by jury in accordance with G.S. 1A-1, Rule 39(b), Rules of Civil Procedure, by entering an order for trial by jury on his own motion. The jury shall be composed of 12 persons chosen from the county's jury list in accordance with the provisions of Chapter 9 of the General Statutes." [G.S. 35A-1110]

(3) The petitioner and the respondent are entitled to present testimony and documentary evidence, to subpoena witnesses and the production of documents, and to examine and cross-examine witnesses. [G.S. 35A-1112(b)]

(4) The hearing is open to the public unless the adult or his/her counsel or guardian ad litem requests otherwise, in which event the clerk shall exclude all persons other than those directly involved in or testifying at the hearing. [G.S. 35A-1112(a)]

(5) The clerk shall dismiss the proceeding if the finder of fact, whether the clerk or a jury, does not find the respondent to be incompetent.

If the finder of fact, whether the clerk or the jury, finds by clear, cogent, and convincing evidence that the respondent is incompetent, the clerk shall enter an order adjudicating the respondent incompetent. The clerk may include in the order findings on this nature and extent of the ward's incompetence. [G.S. 35A-1112(c-d)]

(6) Following an adjudication of incompetence the clerk shall either appoint a guardian pursuant to Subchapter II (of Chapter 35A) or, for good cause shown, transfer the proceeding for the appointment of a guardian to any county

identified in G.S. 35A-1103 (see Paragraph 1.a. of this subsection). [G.S. 35A-1112(e)]

b. State Policy

None

c. Social Work Practice Guidelines

(1) "Counsel" refers to an attorney. A "guardian ad litem" as specified in G.S. 35A-1107, must be an attorney.

The guardian ad litem is required to make a personal visit to the respondent once appointed. The guardian ad litem is also required to make a determination about what the respondent wants regarding the incompetency proceeding.

If the ward is able to express to the guardian ad litem his or her wishes about the incompetency proceeding, the guardian ad litem is required to represent what the ward's wants (expressed wishes) to the clerk during the hearing. This means if the ward does not wish to be adjudicated incompetent; the guardian ad litem must represent the ward's wishes not to be adjudicated incompetent during the hearing.

The guardian ad litem may also make recommendations to the clerk about what is in the best interest of the ward during the hearing, provided the ward's best interest is different from the ward's expressed wishes. For example, a ward expresses that she does not want to be adjudicated incompetent. The guardian ad litem must represent to the clerk that the ward should not be adjudicated incompetent. However, if the guardian ad litem believes it is in the ward's best interest to be adjudicated an "incompetent adult", the guardian ad litem may also recommend this to the court because the ward's best interest is different from the ward's expresses interest.

Generally after the petition has been filed the petitioner does not have contact with the respondent related to the adjudication of incompetency. However, the guardian ad litem acting on the respondent's behalf may have contact with the petitioner. The guardian ad item may request

specific information about the respondent, including information about the respondent's functional capacity.

(2) The respondent may attend the hearing; however, the respondent's presence is not required. The petitioner and counsel or guardian ad litem always will be present at the hearing. Other persons who are notified of the hearing (family members, expert witnesses, etc.) may be present. Anyone who is subpoenaed is required to attend.

(3) In preparation for the hearing, case notes should be reviewed regarding the facts of the respondent's situation and factual examples of the respondent's functioning and the problem that has resulted in incompetency and the need for a guardian. Care should be taken to limit the prepared testimony to information relevant to the circumstances which have resulted in a need for guardianship. Information in the case record which does not relate to the issue should not be included in the testimony. A calendar of events is a good basis for testimony. The significant contacts with the adult and other important events as recorded in the case record may be noted on a blank calendar or listed in sequence for reference in court.

(4) If the agency has asked other persons to testify, the agency attorney and staff should meet with them to review questions that may be asked, how to testify, courtroom procedures, etc. This is particularly important with persons who have no prior experience in a guardianship proceeding.

(5) After the petition is filed, any communication to the respondent regarding the incompetency proceeding should be through the guardian ad litem.

(6) To insure having the latest information about the respondent's condition, a visit should be made to the adult on the day before or the day of the hearing. As indicated above, the incompetency proceeding should not be discussed with the respondent during this visit.

E. Appointment of Guardian

1. Statutory Requirement

a. Venue

"Venue for the appointment of a guardian for an incompetent person is in the county in which the person was adjudicated to be incompetent unless the clerk in that county has transferred the matter to a different county, in which case venue is in the county to which the matter has been transferred." [G.S. 35A-1204(a)]

"At any time before or after appointing a guardian for a minor or incompetent person the clerk may, on a motion filed in the cause or on the court's own motion, for good cause order that the matter be transferred to a different county. The transferring clerk shall enter a written order directing the transfer under such conditions as the clerk specifies. The clerk in the transferring county shall transfer all original papers, documents, and orders from the guardianship and the incompetency proceeding, if any, to the clerk of the transferee county along with the order directing the transfer. The clerk in the transferee county shall close his file with a copy of the transfer order and any order adjudicating incompetence or appointing a guardian." [G.S. 35A-1205]

b. Application

"Any individual, corporation, or disinterested public agent may file an application for the appointment of a guardian for an incompetent person by filing the same with the clerk.

The application may be joined with or filed subsequent to a petition for the adjudication of incompetence under Subchapter I of this Chapter.

The application shall set forth, to the extent known and to the extent such information is not already a matter of record in the case:

(1) The name, age, address, and county of residence of the ward or respondent;

(2) The name, address, and county of residence of the applicant, his relationship if any to the respondent or ward, and his interest in the proceeding;

(3) The name, address, and county of residence of the respondent's next of kin and other persons known to have an interest in the proceeding;

(4) A general statement of the ward's or respondent's assets and liabilities with an estimate of the value of any property, including any income and receivables to which he is entitled; and

(5) Whether the applicant seeks the appointment of a guardian of the person, a guardian of the estate, or a general guardian, and who the applicant recommends or seeks to have appointed as such guardian or guardians." [G.S. 35A-1210]

c. Service of Application Motions and Notices

(1) Application for appointment of a guardian and related motions and notices shall be served on the respondent, respondent's counsel or guardian ad litem, other parties of record, and such other persons as the clerk shall direct.

(2) When the application for appointment of a guardian is joined with a petition for adjudication of incompetence, the application shall be served with and in the same manner as the petition for adjudication of incompetence. When the application is filed subsequent to the petition for adjudication of incompetence, the applicant shall serve the application as provided as G.S. 1A-1, Rule 5, Rules of Civil Procedure, unless the clerk directs otherwise. [G.S. 35A-1211]

d. Hearing

(1) "The clerk shall make such inquiry and receive such evidence as the clerk deems necessary to determine:

(a) the nature and extent of the needed guardianship;
(b) the assets, liabilities, and needs of the ward; and
(c) who, in the clerk's discretion, can most suitably serve as guardian or guardians." [G.S. 35A-1212(a)]

(2) "If a current multidisciplinary evaluation is not available and the clerk determines that one is necessary, the clerk, on his own motion or the motion of any party, may order that such an evaluation be performed pursuant to G.S. 35A-1111. The provisions of that section shall apply to such an order for a multidisciplinary evaluation following an adjudication of incompetence." [G.S. 35A-1212(b)]

(3) "The clerk may require a report prepared by a designated agency to evaluate the suitability of a prospective guardian, to include a recommendation as to an appropriate party or parties to serve as guardian, or both, based on the nature and extent of the needed guardianship and the ward's assets, liabilities, and needs." [G.S. 35A-1212(c)]

e. Clerk's Order

When appointing a guardian, the clerk shall enter an order setting forth:

(1) The nature of the guardianship or guardianships to be created and the name of the person or entity appointed to fill each guardianship; and

(2) The powers and duties of the guardian or guardians, which shall include, unless the clerk orders otherwise, (i) with respect to a guardian of the person and general guardian, the powers and duties provided under G.S. 35A, Article 8, and (ii) with respect to a guardian of the estate and general guardian, the powers and duties provided under G.S. 35A, Article 9 and Subchapter III; and

(3) The identity of the designated agency if there is one.

The clerk may order that the ward retain certain legal rights and privileges to which he was entitled before he was adjudged incompetent; provided, any such order shall include findings as to the nature and extent of the ward's incompetence as it relates to the ward's need for a guardian or guardians. [G.S. 35A-1215(a-b)]

f. Letters of Appointment

The clerk shall issue the guardian or guardians letters of appointment as provided in G.S. 35A-1206. [G.S. 35A-1215(c)]

"Whenever a guardian has been duly appointed and qualified under this Subchapter, the clerk shall issue to the guardian letters of appointment signed by the clerk and sealed with the clerks seal of office. In all cases, the clerk shall specify in the order and letters of appointment whether the guardian is a guardian of the estate, a guardian of the person, or a general guardian." [G.S. 35A-1206]

A disinterested public agent who is appointed as guardian shall serve in that capacity by virtue of his office or employment, which shall be identified in the clerk's order and in the letter of appointment. When the disinterested public agent's office or employment terminates, his successor in office or employment, or his immediate supervisor if there is no successor, shall succeed him as guardian without further proceedings unless the clerk orders otherwise. [G.S. 35A-1213(d)]

2. State Policy

None

3. Social Work Practice Guidelines

a. There is no statutory requirement regarding the length of time between the hearings on adjudication of incompetence and appointment of a guardian. The hearing to appoint a guardian may be held immediately following the adjudication of incompetence or may be held at a later time.

A delay in appointment of a guardian may occur if there is a question about who is to be appointed.

b. The agency should make a recommendation to the clerk of whom to appoint as guardian. (See paragraph (b.(5) of this subsection). The recommendation should be presented with an explanation of how it relates to the statutory priorities, i.e., individual, corporation, disinterested public agent.

c. The order for appointment of a disinterested public agent as guardian should include the agent's name, title, and the phrase "and his successor in office." Should the disinterested public agent leave the position in which he/she was appointed guardian, the guardianship automatically would become the responsibility of the next person in that position. The clerk of court should be notified by the agency when a disinterested public agent leaves office and his/her successor is designated.

F. Interim Guardianship

1. Statutory Requirement

a. At the time of or subsequent to the filing of a petition for adjudication of incompetence, the petitioner may also file a verified motion with the clerk seeking the appointment of an interim guardian.

b. The motion shall set forth facts tending to show:

(1) That there is reasonable cause to believe that the respondent is incompetent, and

(2) One or both of the following:

(a) That the respondent is in a condition that constitutes or reasonably appears to constitute an imminent or foreseeable risk of harm to his physical well-being and that requires immediate intervention;

(b) That there is or reasonably appears to be an imminent or foreseeable risk of harm to the respondent's estate that requires immediate intervention in order to protect the respondent's interests, and

(3) That the respondent needs an interim guardian to be appointed immediately to intervene on his behalf prior to the adjudication hearing. [G.S. 35A-1114 (a-b)]

c. Upon filing of the motion for appointment of an interim guardian, the clerk shall immediately set a date, time, and place for a hearing on the motion. The motion and a notice setting the date, time, and

place for the hearing shall be served promptly on the respondent and on his counsel or guardian ad litem and other persons the clerk may designate. The hearing shall be held as soon as possible but no later than 15 days after the motion has been served on the respondent. [G.S. 35A-1114(c)]

d. If at the hearing the clerk finds that there is reasonable cause to believe that the respondent is incompetent and:

(1) That the respondent is in a condition that constitutes or reasonably appears to constitute an imminent or foreseeable risk of harm to his physical well-being, and that there is immediate need for a guardian to provide consent or take other steps to protect the respondent, or

(2) That there is or reasonably appears to be an imminent or foreseeable risk of harm to the respondent's estate, and that immediate intervention is required in order to protect the respondent's interest,

the clerk shall immediately enter an order appointing an interim guardian. [G.S. 35A-1114(d)]

e. The clerk's order appointing an interim guardian shall include specific findings of fact to support the clerk's conclusions, and shall set forth the interim guardian's powers and duties. Such powers and duties shall be limited and shall extend only so far and so long as necessary to meet the conditions necessitating the appointment of an interim guardian. In any event, the interim guardianship shall terminate on the earliest of the following: the date specified in the clerk's order; 45 days after entry of the clerk's order unless the clerk, for good cause shown extends that period for up to 45 additional days; when any guardians are appointed following an adjudication of incompetence; or when the petition is dismissed by the court. An interim guardian whose authority relates only to the person of the respondent shall not be required to post a bond. If the interim guardian has authority related to the respondent's estate, the interim guardian shall post a bond in an amount determined by the clerk, with any conditions the clerk may impose, and shall render an account as directed by the clerk. [G.S. 35A-1114(e)]

f. When a motion for appointment of an interim guardian has been made, the petitioner may voluntarily dismiss the petition for adjudication of incompetence only prior to the hearing on the motion for appointment of an interim guardian. [G.S. 35A-1114(f)]

2. State Policy

None

3. Social Work Practice Guidelines

a. An interim guardian may be appointed to consent on an incompetent adult's behalf to intervention when the adult is in a condition which constitutes or reasonably appears to constitute imminent or foreseeable harm to his physical well-being or his estate.

As stated in the law, interim guardianship is limited to the specific powers and duties set forth by the clerk and in time to a maximum of 45 days. For good cause shown, the period of interim guardianship may be extended an additional 45 days. The clerk's order should specify the interim's guardian's authority and scope of the interim guardianship. The interim guardian should not consent to any intervention on the adult's behalf that is not authorized in the clerk's order. The interim guardian also should not consent to any intervention on the adult's behalf past the timeframe indicated in the clerk's order.

An interim guardian of the person is not required to post bond. A bond is required, as set by the clerk, for an interim guardian of the estate, and a general interim guardian. (See Section 6640, DHHS Blanket Bond for information on how to compute the bond.)

b. The guardianship law requires that a petition for the adjudication of incompetence be filed prior to or at the same time as a motion for appointment of an interim guardian. (See subsection D.2 of this section for information about the petition for adjudication of incompetence.) Thus, interim guardianship is not an appropriate way to address an emergency unless:

(1) the adult is alleged to be incompetent;

(2) guardianship is the appropriate alternative to meet the adult's needs and there is a need to pursue the appointment of a guardian for the adult;

(3) the adult is in a condition that constitutes or reasonably appears to constitute an imminent or foreseeable risk of harm to the adult and or the adult's estate; and

(4) immediate intervention is needed to protect the adult and/or the adult's estate.

The motion for the appointment of an interim guardian should specify the intervention(s) needed to protect the adult and/or the adult's estate. For example, if the alleged incompetent adult requires emergency hospitalization, and there is no one with the authority to consent on the adult's behalf before the adjudication of incompetence and appointment of a guardian hearings are held, the motion for interim guardianship should request legal authority to admit the alleged incompetent adult to the hospital and consent to emergency medical treatment. The clerk's order on the motion for the appointment of an interim guardian should specify that the interim guardian has the authority to admit the adult to the hospital and consent to emergency medical treatment. The clerk's order should also specify the timeframe for the interim guardianship order. If at the end of the initial 45 days the adjudication of incompetence and appointment of a guardian hearings have not been held, and the adult and/or the adult's estate continues to be at risk of harm, the interim guardian may request an additional 45 days to handle the emergency necessitating the interim guardianship. After the expiration of the additional 45 days (90 days) the interim guardianship order is no longer valid. The interim guardian's legal authority ends when the court order expires. If the adjudication of incompetence and appointment of a guardian hearings have not been held after 90 days, and the adult continues to be at risk, the matter should be brought to the clerk's attention.

G. Restoration To Competency

1. Statutory Requirement

a. Petition for Restoration to Competency

"The guardian, ward, or any other interested person may petition for restoration of the ward to competency by filing a motion in the cause of the incompetency proceeding with the clerk who is exercising jurisdiction therein. The motion shall be verified and shall set forth facts tending to show that the ward is competent." [G.S. 35A-1130(a)]

b. Notice of Hearing

Upon receipt of the motion, the clerk shall set a date, time, and place for a hearing, which shall be not less than 10 days or more than 30 days from service of the motion and notice of hearing on the ward and the guardian, or on the one of them who is not the petitioner, unless the clerk for good cause directs otherwise. The petitioner shall cause notice and a copy of the motion to be served on the guardian and ward (but not on one who is the petitioner) And any other parties to the incompetency proceeding. Service shall be in accordance with provisions of G.S. 1A-1, Rule 4, Rules of Civil Procedure. [G.S. 35A-1130(B)]

c. Hearing on Restoration to Competency

(1) At the hearing on the motion, the ward shall be entitled to be represented by counsel or guardian ad litem, and the clerk shall appoint a guardian ad litem if the ward is indigent and not represented by counsel. Upon motion of any party or the clerk's own motion, the clerk may order a multidisciplinary evaluation. The ward has a right, upon request by him, his counsel, or his guardian ad litem to trial by jury. Failure to request a trial by jury shall constitute a waiver of the right. The clerk may nevertheless require trial by jury in accordance with G.S. 1A-1, Rule 39(b), Rules of Civil Procedure, by entering an order for trial by jury in a proceeding for restoration to competency, it shall be a jury of six persons selected in accordance with the provisions of Chapter 9 of the General Statutes. [G.S. 35A-1130(c)]

(2) If the clerk or jury finds by a preponderance of the evidence that the ward is competent, the clerk shall enter an order adjudicating that the ward is restored to competency. Upon such adjudication, the ward is authorized to manage his affairs, make contracts, control and sell his property, both real and personal, and exercise all rights as if he had never been adjudicated incompetent. [G.S. 35A-1130(d)]

(3) If the clerk or jury fails to find that the ward should be restored to competency, the clerk shall enter an order denying the petition. The ward may appeal from the clerk's order to the superior court for trial de novo. [G.S. 35A-1130(f)]

2. State Policy

When the ward appears to be no longer incompetent, the guardian shall notify the clerk of superior court for restoration to competency.

3. Social Work Practice Guidelines

The guardian, ward or any other interested person may file a petition with the clerk who appointed the guardian for the restoration of the ward to competency.

Public agent guardians are required to notify the clerk of court when a ward is no longer incompetent. This notification is done in the form of a motion in the cause requesting the ward's competence be restored.

H. Removal and Resignation of Guardians; Estates Without Guardians

1. Statutory Requirement

a. Removal by Clerk

"The clerk has the power and authority on information or complaint made to remove any guardian appointed under the provisions of this Subchapter, to appoint successor guardians, and to make rules or enter orders for the better management of estates and the better care and maintenance of wards and their dependents."[G.S. 35A-1290(a)]

"It is the clerk's duty to remove a guardian or take other action sufficient to protect the ward's interest in the following cases:

(1) The guardian wastes the ward's money or estate or converts it to his own use.

(2) The guardian in any manner mismanages the ward's estate.

(3) The guardian neglects to care for or maintain the ward or his dependents in a suitable manner.

(4) The guardian or his sureties are likely to become insolvent or to become nonresidents of the State.

(5) The original appointment was made on the basis of a false representation or a mistake.

(6) The guardian has violated a fiduciary duty through default or misconduct.

(7) The guardian has a private interest, whether direct or indirect, that might tend to hinder or be adverse to carrying out his duties as guardian." [G.S. 35A-1290(b)(7)]

"It is the clerk's duty to remove a guardian or to take other action sufficient to protect the ward's interest in the following cases:

(1) The guardian has been adjudged incompetent by a court of competent jurisdiction and has not been restored to competence.

(2) The guardian has been convicted of a felony under the laws of the United States or of any state or territory of the United States or of the District of Columbia and his citizenship has not been restored."

(3) The guardian was originally unqualified for appointment and continues to be unqualified, or the guardian would no longer qualify for appointment as guardian due to a change in residence, a change in the charter of a corporate guardian, or any other reason.

(4) The guardian is the ward's spouse and has lost his rights as provided by Chapter 31A of the General Statutes.

(5) The guardian fails to post, renew, or increase a bond as required by law or by order of the court.

(6) The guardian refuses or fails without justification to obey any citation, notice, or process served on him in regard to the guardianship.

(7) The guardian fails to file required accountings with the clerk.

(8) The clerk finds the guardian unsuitable to continue serving as guardian for any reason."[G.S. 35A-1290(c)]

(9) The guardian is a nonresident of the State and refuses or fails to obey any citation, notice, or process served on the guardian or the guardian's process agent." [G.S. 35A- 1290 (c)

a.1 Emergency Removal; Interlocutory Order on Revocation

"The clerk may remove a guardian without a hearing if the clerk finds reasonable cause to believe that an emergency exists that threatens the physical well-being of the ward or constitutes a risk of substantial injury to the ward's estate. In all cases where the letters of a guardian are revoked, the clerk may, pending the resolution of any controversy in respect to such removal, make such interlocutory orders and decrees as the clerk finds necessary for the protection of the ward or the ward's estate or the other party seeking relief by such revocation." [G.S. 35A-1291]

b. Resignation of Guardian

"Any guardian who wishes to resign may apply in writing to the clerk, setting forth the circumstances of the case. If a general guardian or guardian of the estate, at the time of making the application, also exhibits his final account for settlement, and if the clerk is satisfied that the guardian has fully accounted, the clerk may accept the resignation of the guardian and discharge him and appoint a successor guardian, but the guardian so discharged and his sureties are still liable in relation to all matters connected with the guardianship before the discharge." [G.S. 35A-1292(a)]"

A general guardian who wishes to resign as guardian of the estate of the ward but continue as guardian of the person of the ward may apply for the partial resignation by petition as provided in subsection (a) of this section. If the general guardian also exhibits his final account as guardian of the estate for settlement, and if the clerk is satisfied that the general guardian has fully accounted as guardian of the estate, the clerk may accept the resignation of the general guardian as guardian of the estate, discharge him as guardian of the estate, and issue to him letters of appointment as guardian of the person, but the general guardian so discharged as guardian of the estate and his sureties are still liable in relation to all matters connected with the guardianship of the estate before the discharge." [G.S. 35A-1292(b)]

c. Appointment of Successor Guardian

"Upon the removal, death, or resignation of a guardian, the clerk shall appoint a successor guardian following the same criteria that would apply to the initial appointment of a guardian." [G.S. 35A-1293]

d. Accounting

"Whenever a general guardian or guardian of the estate is removed, resigns, or stops serving without making a full and proper accounting, the successor guardian, or the clerk if there is no successor guardian, shall initiate a proceeding to compel an accounting. The surety or sureties on the previous guardian's bond shall be served with notice of the proceeding." [G.S. 35A-1294(a)]

e. Receivership

(1) "If no successor guardian has been appointed, the clerk may act as receiver or appoint some discreet person as a receiver to take possession of the ward's estate, to collect all moneys due the ward, and to secure, lend, invest, or apply the same for the benefit and advantage of the ward, under the direction of the clerk until a successor guardian is appointed. The accounts of the receiver shall be returned, audited, and settled as the clerk may direct. The receiver shall be allowed such amounts for his time, trouble, and responsibility as seem to the clerk reasonable and proper. Such receivership may continue until a suitable guardian can be appointed." [G.S. 35A-1294(b)]

(2) "When another guardian is appointed, he may apply by motion, on notice, to the clerk for an order directing the receiver to pay over all the money, estate, and effects of the ward. If no such guardian is appointed, the ward shall have the same remedy against the receiver on becoming age 18 or otherwise emancipated if the ward is a minor or on being restored to competence if the ward is an incompetent person. In the event of the ward's death, his executor, administrator, or collector, and the heir or personal representative of the ward shall have the same remedy against the receiver." [G.S. 35A-1294(c)]

2. State Policy

When a disinterested public agent guardian ceases to qualify as a disinterested public agent, the guardian shall notify the clerk of superior court who will then appoint a successor guardian.

3. Social Work Practice Guidelines

The clerk has the authority and responsibility to see that the guardian's duties are carried out in accordance with law and that the ward's interests are protected. Whenever there is any question about a guardian's performance of his duties, and the concern cannot be resolved with the guardian directly, the clerk should be notified.

G.S. 35A-1290(c) gives authority to the clerk to remove a nonresident guardian. This change authorizes the clerk to remove a nonresident

guardian when the nonresident guardian fails or refuses to obey any citation, notice, or service of process served on the nonresident guardian or the guardian's resident agent.

Historically, clerks of court have been reluctant to appoint nonresidents to serve as guardians of the person for wards residing in North Carolina. A major reason for this reluctance is because clerks lack jurisdictional authority in others states. For example, if a nonresident guardian fails to comply with the laws of North Carolina, issuing show cause or contempt orders are not options clerks can use to force compliance because other states are not legally obligated to comply with North Carolina courts. Now that clerks have the authority to remove nonresident guardians, they may be more willing to consider recommendations to appoint nonresident guardians since jurisdictional authority will not be an issue.

The Clerk also has the authority to remove a guardian, no matter the type guardianship, without a hearing in the event of an emergency that threatens the ward's physical well-being, or when the ward's estate is at substantial risk; and to enter interlocutory orders or decrees to protect the ward or the ward's estate. This authority to remove a guardian without a hearing and issue orders expedites the clerk's ability to protect the ward or the ward's estate until a successor guardian is appointed.

The statute does not require written notification (motion/petition) to the clerk to remove a guardian in the event of an emergency that threatens the ward's physical well-being, or when the ward's estate is at substantial risk. It is important to collaborate with your clerk of court around these changes to determine how the clerk plans to handle these requests.

A guardian may decide to resign when an individual (family member, friend, etc.) or a corporation has been located and is appropriate to assume the guardianship. It is appropriate for the guardian to seek a partial resignation or a full resignation from the court as allowed in [G.S. 35A-1292 (a) (b)]. The guardian is allowed in [G.S. 35a-1207] to request modification of the order appointing the guardian or for consideration of any matter pertaining to the guardianship. To seek a partial or full resignation (modification of the guardianship) the guardian may file a motion in the cause (petition) with the court that has jurisdiction in the guardianship matter. After the guardianship appointment all matters brought before the court to modify the guardianship are called motions in the cause.

When a guardian files a motion in the cause seeking resignation the motion should contain the names (s) of the successor guardian. The motion should also contain the name (s) of the resident agent if the successor guardian is a non-resident and is being recommended to serve as guardian of the person, estate or general guardian.

III. Authority and Responsibility of the Guardian

Article 5, of Chapter 35A, Appointment of Guardian for Incompetent Person provides for four types of guardians:

- Guardian of Person,
- Guardian of the Estate,
- General Guardian, and
- Limited Guardian

The following section contains statutory requirements, state policies and social work practice guidelines regarding the authority and responsibility of guardians of the person and the estate. A general guardian's authority and responsibility encompasses that of both the guardians of the person and of the estate.

The primary responsibility of a guardian is decision making. In North Carolina, any individual no longer capable of making and communicating important decisions about his/her person and/or assets has the right to have a qualified guardian appointed to make decisions on his/her behalf. However, guardianship is an intrusive process because it can remove most of an individual's rights; and as such, should be sought only when it will benefit the individual for whom it is sought. Guardianship is not an appropriate alternative to attempt to control an individual's behavior. The purpose of guardianship is to appoint a guardian to help the individual exercise his or her rights.

The guardian serves as the legally appointed surrogate decision maker and advocate for the ward. Guardians may authorize decisions that have a tremendous impact on the life and lifestyle of wards. In order to make informed decisions in the best interest of the ward, it is important that the guardian obtain expert consultation whenever there is a question about the appropriate course of action to take. This is especially important when decisions must be made about issues outside the guardian's area of expertise.

Basic Principles for Decision Making

The following are basic principles the guardian should use to guide the decision making process. The guardian has a legal and ethical obligation to:

- **Limit the guardianship to enable wards to retain certain legal rights and privileges.**
  Guardianship should not be viewed as a "one size fits all" approach. The determination that an individual is an "incompetent", adult" is a legal decision made by the clerk of court, and should not be based solely on a diagnosis or a doctor's statement that an individual is "incompetent". Specific information about an individual's functional capacity allows a guardianship to be tailored to meet the needs

of the individual based on the individual's functional strengths and limitations. Limiting the guardianship allows individuals to retain the legal authority to make and communicate their own decisions in the areas where they have the functional capacity to do so. It also limits the guardian's decision-making authority to only those areas where the individual lacks the capacity to make and communicate important decisions. A guardianship may be limited at the time a petition is filed for the adjudication of incompetence and appointment of a guardian. A guardianship may also be limited after the adjudication of incompetence and appointment of a guardian. This may be accomplished by filing a motion with the clerk requesting that the guardianship be limited. Limiting the guardianship acknowledges and supports an individual's autonomy and right to self-determination.

- **Preserve for wards the opportunity to exercise those rights within their comprehension and judgment, allowing for the possibility of error to the same degree as is allowed to persons who are not incompetent.**

  The fact that an individual has been adjudicated incompetent is not an indicator that the individual lacks the capacity to participate in and make certain decisions. G. S. 35A-1201(5) states "To the maximum extent of his capabilities, an incompetent person should be permitted to participate as fully as possible in all decisions that will effect him". As the ward's advocate, the guardian must allow the ward the opportunity to participate in all decisions affecting him or her commensurate with the ward's capacity to understand the issue(s) at hand and make an informed choice. The guardian must allow the ward this opportunity even when the clerk's order does not allow the ward to retain certain rights and privileges.

- **Make informed decisions in the best interest of wards.**

  The guardian should obtain the necessary information, insight, and documentation relevant to the decision(s) to be made from all appropriate sources. This may include the ward, when the ward is capable of participating in the decision at hand; the ward's family, and friends; and legal, medical, ethical, and other human services professionals, when needed. The guardian may also seek the clerk's concurrence on difficult decisions. Although the guardian may obtain information and insight from others, the guardian must make all decisions in the best interest of the ward without coercion or influence from others. The guardian owes a fiduciary duty to the ward and must act solely for the benefit of the ward, and not for the guardian's personal benefit or the convenience or benefit of others. The guardian acts to protect, intervene, advocate, support and recommend a course of action that is in the best interest of the ward and is accountable to the ward for these decisions.

- **Maximize wards' self-reliance and independence.**

Wards should be given opportunities to take as much control over their own decision making as is reasonable and appropriate, commensurate with their comprehension and judgment. The guardian should assist, guide, support and educate wards in developing or regaining the necessary skills to assume responsibility for their own decision making.

- **Ensure wards reside in the least restrictive environment available.**

  The guardian should give preference to living arrangements that are not treatment facilities. In instances where the only available and appropriate living arrangements are treatment facilities, the guardian should give preference to community-based treatment facilities, such as group homes, adult care homes, or nursing homes, over treatment facilities that are not community-based, such as psychiatric hospitals. The guardian should involve the ward, the ward's family, and caregivers in decisions about where the ward will live. This supports the ward's right to participate in the decision making process and is family centered.

- **Petition the court for restoration to competence when wards appear no longer incompetent.**

  Disinterested public agent guardians are required to petition the court for restoration of a ward's competency when the ward appears no longer incompetent. The guardian, ward or any interested party may file a petition with the clerk, who has jurisdiction in the matter, seeking restoration of the ward's competency. Once competence is restored, the ward is legally authorized to exercise all rights as if never adjudicated incompetent.

- **Provide competent management of wards' estates.**

  Management of the ward's estate may involve decision making and actions on a variety of complex matters. The guardianship statute allows the guardian of the estate to employ persons, including attorneys, auditors, investment advisors, etc. to assist the guardian with carrying out the duties of the guardian of the estate. The guardianship statute also allows the guardian of the estate to use the ward's assets to pay the necessary expenses of administering the ward's estate when the ward's estate is sufficient to pay these expenses. Employing an accountant or other expert to manage the ward's estate may be considered a necessary expense of administering the ward's estate. If the ward's estate is not sufficient to employ an expert(s) to assist with managing the ward's estate, the guardian may choose to arrange for consultation with experts only on difficult financial matters.

A. Guardian of the Person

Unless the guardianship is limited by the court, the guardian of the person is responsible for all aspects of a ward's personal welfare. As outlined in this section, the guardian's responsibility covers a wide range of concerns, such as where the ward will live, whether he should have medical treatment or surgery, etc. When there is any question about the appropriate course of action to take for a ward, consultation should be obtained from an expert on the issue, i.e. physician, psychologist, attorney, etc.

Payment for such consultation may be made from the ward's estate if the ward has sufficient resources to cover the cost. If there is a guardian of the estate, the guardian of the person should communicate with him regarding the need for funds as discussed in this section. If the ward does not have sufficient resources to cover the cost of consultation, an effort should be made to identify experts who will provide consultation at no charge, i.e. the agency attorney, health department physician, etc.

When the director or assistant director of a local human service agency is appointed guardian of the person, the day-to-day management of the guardianship is often delegated to the agency's social work, case management, or other staff. The agency should have policies and procedures for communicating to the director or assistant director guardian regarding the ward's condition, need for treatment, service. etc. (See Section 6620, Authority and Responsibility of the Guardian of the Person fro more information about policies and procedures to facilitate informed decision making.)

1. Clerk's Order

a. Statutory Requirement

(1) "When appointing a guardian, the clerk shall enter an order setting forth:

(a) The nature of the guardianship or guardianships to be created and the name of the person or entity appointed to fill each guardianship; and

(b) The powers and duties of the guardian or guardians, which shall include, unless the clerk orders otherwise, (i) with respect to a guardian of the person and general guardian, the powers and duties provided under G.S. 35A, Article 8, and (ii) with respect to a guardian of the estate and general guardian, the powers and duties provided under G.S. 35A, Article 9 and Subchapter III; and

(c) The identity of the designated agency if there is one.

The clerk may order that the ward retain certain legal rights and privileges to which he was entitled before he was adjudged incompetent; provided, any such order shall include findings as to the nature and extent of the ward's incompetence as it relates to the ward's need for a guardian or guardians.

The clerk shall issue the guardian or guardians letters of appointment as provided in G.S. 35A-1206."[G.S. 35A-1215]

(2) "Whenever a guardian has been duly appointed and qualified under this Subchapter, the clerk shall issue to the guardian letters of appointment signed by the clerk and sealed with the clerk's seal of office. In all cases, the clerk shall specify in the order and letters of appointment whether the guardian is a guardian of the estate, a guardian of the person, or a general guardian." [G.S. 35A-1206]

b. State Policy

None

c. Social Work Practice Guidelines

The guardian of the person should have a written order from the clerk. The guardian's authority over the ward is as specified in the order.

2. Authority and Responsibility of Guardian of the Person

A guardian of the person has the following powers and duties to the extent they are not inconsistent with the terms of any order of the clerk or any other court of competent jurisdiction. [G.S. 35A-1241(a)]

a. Custody of ward's person; care, comfort and maintenance of ward

(1) Statutory Requirement

The guardian of the person is entitled to custody of the person of his ward and shall make provision for his ward's

care, comfort and maintenance, and shall, as appropriate to the ward's needs, arrange for his training, education, employment, rehabilitation or habilitation.

The guardian of the person shall take reasonable care of the ward's clothing, furniture, vehicles, and other personal affects that are with the ward. [G.S. 35A-1241(a)(1)]

(2) State Policy

None

(3) Social Work Practice Guidelines

(a) The scope of the guardian's powers include the custody of the person of the ward (unless the clerk's order limits the guardian's authority) and mandates that the guardian provide for the ward's care, comfort and maintenance. The guardian is therefore given the legal authority and duty of providing for the ward in all areas of the ward's life.

In instances where the guardian learns that the ward is being mistreated, the guardian has the power and duty to take responsible actions necessary to protect the ward from further mistreatment. This includes, but is not limited to:

* ensuring, through monitoring and contact with the ward and/or the ward's family/caregivers, that the ward is receiving appropriate care and treatment in a safe environment conducive to the ward's mental and physical well-being;

* contacting law enforcement and/or licensing and regulatory agencies, when appropriate, to ensure that the ward is free from abuse, neglect and exploitation; and

* removing the ward from any environment where mistreatment is occurring when the environment cannot be made safe.

The guardian is not acting within the authority and responsibility granted in the statute when the ward is being mistreated and the guardian is not acting to protect him. For example, the guardian receives information that a ward, who resides in a residential facility, was injured during the use of a protective intervention technique used to physically restrain him. It is the guardian's legal responsibility and duty in a situation like this to intervene to make sure that the ward will not be injured again.

The guardian may respond by contacting facility staff and working with them to develop a more appropriate and less risky treatment plan for dealing with the ward's difficult behaviors. The guardian may also request that staff are adequately trained to work with persons with difficult behaviors and monitor the situation to make sure that the ward is no longer at risk. The guardian may choose to contact the regulatory authority for the residential facility when there are violations of standards, such as client/patient rights. The guardian may choose to contact law enforcement or the district attorney's office when criminal laws have been violated, regardless of the ward's living arrangement. In instances where the ward continues to be at risk it may be necessary to locate a more appropriate living arrangement for the ward.

(b) The ward has the right to be free from the use of force. In instances where the ward is not cooperative with a plan of care, such as going willingly to appointments, moving to other living arrangements, etc. and the plan is in his best interest, the guardian may, as a last resort, request an order from the clerk authorizing the use of law enforcement.

(c) The guardian should arrange for the ward's needs to be met to the extent the ward's resources can cover expenses.

(d) The guardian should apply for any public resources that may be available to pay for the ward's needs.

(e) The guardian should evaluate the appropriateness of training, education, employment, rehabilitation or habilitation, based on the ward's needs, abilities, and prior experience. A professional evaluation should be obtained when necessary.

(f) The guardian is responsible for seeing that insurance coverage is maintained on personal effects that are with the ward.

(g) The guardian should secure and protect personal valuables (i.e. jewelry, art, etc.) on an ongoing basis for the duration of the guardianship.

(h) When valuable items of personal property need to be sold to generate funds for the ward, the sale of such property should be handled by the guardian of the estate. If there is no guardian of the estate, the guardian of the person should petition the clerk for a guardian of the estate to be appointed.

(i) If the ward expresses a desire that specified personal belongings be given to certain persons and does not have a will providing for such, it may be possible for such gifts to be made during the ward's lifetime. See Subsection B.2.b for information about advancements of surplus income to certain relatives. In some instances, items of personal property may be considered surplus income for the purpose of making advancements in accordance with the law.

b. Ward's place of abode

(1) Statutory Requirement

The guardian of the person may establish the ward's place of abode within or without the State.

In arranging for a place of abode, the guardian of the person shall give preference to places within this State over places not in this State if in-State and out-of-State places are substantially equivalent.

He shall also give preference to places that are not treatment facilities. If the only available and appropriate places of domicile are treatment facilities, he shall give preference to community-based treatment facilities such as group homes or nursing homes, over treatment facilities that are not community-based. [G.S. 35A-1241(a)(2)]

(2) State Policy

The guardian shall allow the ward to exercise independent decision making and to assume as much responsibility and independence as is reasonable considering the ward's abilities, limitations, functioning capability and scope of the guardianship.

(3) Social Work Practice Guidelines

(a) The guardian should involve the ward and the ward's family in determining where the ward will live, including the type of placement if indicated. The guardian's decision about the ward's domicile should reflect the ward's wishes to the extent possible. The ward's domicile should be as close to family members as possible.

(b) When placement is necessary, it should be in the least restrictive setting. Depending on the circumstances, it may be preferable for the ward to continue in the living arrangement he was in when the guardian was appointed.

(c) A professional evaluation should be obtained when there is any question about the appropriate type or level of placement.

(d) The most desirable placement for a ward may be more expensive than other possibilities. If the ward has resources which could be used to pay for such

placement and there is a guardian of the estate, the guardian of the person should request that the guardian of the estate make the ward's resources available for this purpose.

If the ward does not have sufficient resources to pay for such placement, the guardian should explore the availability of any other funding sources. If none can be identified, the next most desirable placement should be considered.

(e) The reason(s) for the guardian's decision about the ward's place of domicile and type of placement, if applicable, and the guardian's consultation with the ward and family members should be documented.

(f) The guardian may voluntarily admit the ward to a state treatment facility [G.S. Chapter 122C, part 4]. G.S. Chapter 122C, Part 4 and related laws are in Appendix I of this manual.

c. Consent or approval for professional care, counsel, treatment or services

(1) **Statutory Requirement**

The guardian may give any consent or approval that may be necessary to enable the ward to receive medical, legal, psychological, or other professional care, counsel, treatment, or service. The guardian may give any other consent or approval on the ward's behalf that may be required or in the ward's best interest. The guardian may petition the clerk for the clerk's concurrence in the consent or approval. The guardian may not consent to the sterilization of a mentally ill or mentally retarded ward [G.S. 35A-1241(a)(3)]

"To the maximum extent of his capabilities, an incompetent person should be permitted to participate as fully as possible in all decisions that will affect him." [G.S. 35A-1201(a)(5)]

(2) **State Policy**

The disinterested public agent guardian shall allow the ward to exercise independent decision-making and to assume as much responsibility and independence as is reasonable considering the ward's abilities, limitations, functioning capability and scope of the guardianship.

(3) **Social Work Practice Guidelines**

(a) The guardian should consider the ward's condition and decide accordingly as to the need for professional care, counsel, treatment or services. Because of the guardian's responsibility to make decisions on behalf of the ward and be accountable for them, it is important that the agency have procedures or guidelines for decision making.

The procedures or guidelines ideally should be written and should specify who makes which decisions on behalf of the ward. (Refer to Appendix M for sample guidelines for decision making.)

There are two standards commonly recognized in guardianship literature and practice which may be used to make decisions on the ward's behalf, the best interest standard and the substituted judgment standard. Best interest is not defined in the guardianship statute or in state policy, but when using the best interest standard, the guardian bases decisions on what the guardian determines would be best for the ward. This standard of decision making is used in situations where the ward is unable to provide the guardian with any indication of prior or current preferences and reliable or relevant background information does not exist. Substituted judgment is not defined in the guardianship statute or state policy. Using the substituted judgment standard the guardian attempts to reflect the preferences of the ward and bases decisions on what the ward would decide if the ward were still capable of decision making.

(b) The fact that a person has been adjudicated incompetent does not necessarily mean that he is incapable of making some decisions for himself. In instances where the guardianship is limited, the clerk's order may allow the ward to retain certain rights and limit the guardian's statutory authority. It is important that the guardian review the Order on Appointment and Letters of Appointment to determine whether the guardian's authority has been limited.

Even when the guardianship is not limited, "To the maximum extent of his capabilities, an incompetent person should be permitted to

participate as fully as possible in all decisions that will affect him." [G. S. 35A-1201(a) (5)]

The guardian should involve the ward in the decision making process and should consider the ward's opinions and wishes regarding the decisions to be

made that are within his comprehension and judgment allowing for the possibility of error to the same degree as is allowed to persons who are not incompetent.

The difficulty arises when the ward is unable to participate in the decision making process and there is no clear evidence of the ward's wishes. It would be helpful to the guardian to have information about what the ward would decide if the ward were capable of participating in the decision-making process. In these instances the guardian may seek insight from others, such as the ward's family, and friends, in order to make the most reasonable decision(s) possible for the ward.

Ideally the guardian should obtain the following information very soon after the guardianship appointment to facilitate the decision-making process:

- consultation with the ward to determine if he/she is capable of expressing certain preferences, or values.
- determine whether the ward has an advance directive, such as a Living Will. The Living Will is written documentation of a desire to a natural death which is consistent with the provisions of Article 23 of Chapter 90 of the North Carolina General Statutes. This is documentation of the ward's preferences written prior to the adjudication of incompetence and the appointment of the guardian. The guardian may use this documentation as a source of

the ward's stated preferences or wishes about "life-prolonging measures". (Refer to Appendix K for more information about Living Wills.)

- determine whether the ward has a Health Care Power of Attorney. The health care power of attorney may continue to make health care decisions unless the clerk determines that it is necessary to suspend the health care agent's authority and give the power to a guardian.

- (Refer to Appendix L [G.S. 32A Article 3] for more information about the Health Care Power of Attorney.)
- http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_32A/GS_32A-16.html
- consultation with family, friends and others who know the ward to gather information about the ward's preferences, or values.

(c) Among the most difficult decisions a guardian may be required to make on the ward's behalf are those involving invasive medical treatment that require the guardian to authorize, continue, or discontinue risky, perhaps life threatening treatment. Each ward is unique and so is the decision making process. Therefore it is important to remember that like other decisions made on the ward's behalf, decisions about medical treatment must be for the benefit of the ward.

The guardian should obtain expert consultation in any instances where there is a question about appropriate treatment or whether treatment should be provided.

When making decisions on the wards' behalf the guardian should consider the following information before consenting to or denying authorization for medical treatment:

- the ward's current diagnosis;
- the reason for, and nature of the proposed treatment;
- the benefits/necessity of the proposed treatment; and
- alternative treatments or measures that are available and their respective risks, side effects, and benefits.

The guardian may obtain this documentation in writing from the physician. The guardian may choose to have a witness present when discussing the medical necessity for treatment with the physician, especially in situations where the ward's life is threatened.

(Refer to Appendix N for sample formats to be used by the physician(s) to document medical information.)

The seriousness of the action to be taken is a factor in deciding when to request the clerk's concurrence. If there is disagreement with the ward and/or the ward's family regarding the proposed action, the guardian should consider petitioning for the clerk's concurrence.

(d) Some decisions about medical treatment may require a second opinion, especially when the treatment involves a high risk to the ward, such as surgery requiring general anesthesia.

It is important to remember that the decision making authority is the guardian's and the guardian should gather as much information as is needed in order to make an informed decision. The guardian should not feel rushed into making decisions. In instances where an emergency exists, the guardian should still consider the previously mentioned factors before consenting to or denying authorization for medical interventions which may cause a risk to the ward. A medical opinion may be obtained from the treating physician and a second opinion from a non-treating physician for the following medical interventions:

- medical interventions requiring general or local anesthesia or interventions involving a moderate to significant risk to the ward;
- administration of potentially damaging drug regimens, or therapies;
- extensive use of x-rays;
- interventions which may drastically affect the appearance or functioning of the ward, such as amputation, eye and cosmetic surgeries;
- administration of anti-psychotic or psychotropic drugs;
- prescriptions for contraceptives; and

- any other treatment or intervention which would cause a reasonable person to seek a second opinion.

(e) The guardian should arrange for the ward to have regular medical and dental examinations as needed and as required for annual status reports. (Refer to Appendix D [G.S. 35A-1242])

(f) Although the guardianship statute does not specifically address the issue of the withholding or discontinuing of life-prolonging measures, it does offer general guidance. The guardian may give any consent or approval needed to enable the ward to receive medical care, or "any consent or approval needed on the ward's behalf that may be required or in the ward's best interest". [G. S. 35A-1241(3)]. Decisions concerning life-prolonging measures, such as:

(1) entry of "do not resuscitate" orders or

(2) removal of life support should not be made without the approval of the guardian.

If consenting to the withholding of or discontinuance of life-prolonging measures is in the ward's best interest, there is nothing in the statute that precludes guardians from consenting.

It is recommended that the guardian not sign blanket "do not resuscitate" orders, rather that the guardian consider such requests on an individual basis as the need arises.

G. S. 90 contains the conditions by which a physician may request that an individual's life not be prolonged by life-prolonging measures.

G. S. 90-322 deals with procedures for the right to a natural death in the absence of a declaration, or Living Will. The statute sets out the conditions for when life-prolonging measures may be withheld or discontinued. It also sets out the procedure the attending physician must follow to obtain approval or concurrence to withhold or discontinue life-prolonging

measures. This procedure includes obtaining concurrence from the responsible parties in the following order:

(1) the guardian of the person or general guardian; or
(2) a health care agent appointed under a health care power of attorney; or
(3) An attorney-in-fact, with powers to make health care decisions for the patient.
(4) the person's spouse; or
(5) a majority of the patient's reasonably available parents and children who are at least 18 years of age;
(6) A majority of the patient's reasonably available siblings who are at least 18 years of age; or
(7) An individual who has an established relationship with the patient, who is acting in good faith on behalf of the patient, and

the discretion of the attending physician the life-prolonging measures may be withheld or discontinued upon the attending physicians' direction and supervision.

This means that the guardian of the person or general guardian would be called upon for concurrence in instances where there is no health care agent. The guardian of the person or general guardian would also be called upon for concurrence before the ward's spouse and family members. (Refer to Appendix K [G. S. 90-322(b)].)

(g) In instances where a physician is requesting that life-prolonging measures be withheld or discontinued for a ward, the guardian should have, at a minimum, the following information to facilitate an informed decision that is in the best interest of the ward:

- the attending physician's statement/affidavit documenting that the ward's condition meets the criteria outlined in G. S. 90-322(a) and why life-prolonging measures should be discontinued or withheld.

- a second opinion from a non-attending physician in the form of a statement/affidavit documenting

concurrence with the attending physician's statement/affidavit.

- evidence of any advance directives (Living Will, Health Care Power of Attorney) concerning the withholding or discontinuance of extraordinary procedures.
- written statement(s) from family members regarding the ward's wishes, if known, and their wishes for the ward, when possible;
- a summary of findings from the face to face visit with the ward prior to refusal or authorization for withholding or discontinuing life-prolonging measures.

(Refer to Appendix O for examples of Physician's and Non-Attending Physician's Affidavits requesting the withholding or discontinuance of life-prolonging measures.

In determining what the ward's best interest is, consider the ward's condition and the type of care which would be most appropriate for his condition.

In the absence of clear evidence of the ward's wishes, the guardian would make these decisions in collaboration with others, including, the ward's family, the agency attorney, the assigned social worker/case manager, and other professionals, as appropriate.

While it is very important for the guardian to collaborate with others, their approval or disapproval does not relieve the guardian of the responsibility to make an appropriate and independent judgment regarding withholding or discontinuing medical treatment that is in the ward's best interest.

Remember that the guardian has the option of petitioning for the clerk's concurrence in the consent or approval for care or services. Since consenting to withholding or discontinuing life-prolonging measures is a serious decision, it is recommended that the guardian consider petitioning the clerk for

concurrence, making sure to include all of the conditions set out in G. S. 90-322 (a) in the petition.

(h) The guardian may choose to delegate the decision making authority for certain types of decisions to others on staff depending upon the seriousness of the decision(s) and the risk to the ward. Decisions, however, should not be made in a vacuum and should not be left entirely to the social worker/case manager who has been delegated the day to day responsibility for the maintenance of the ward's case. When the guardian delegates decision making authority to others, the guardian should be kept informed of all instances where a serious or invasive medical procedure(s) is authorized on behalf of the ward.

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In the above example the hysterectomy (medical procedure) is medically necessary and will result in sterilization. The guardian cannot consent to the medical procedure without a court order from the clerk because the medical procedure will result in sterilization.

Petition To the Clerk

The Administrative Office of the Courts (AOC) has not developed a form that the guardian may use to petition the court for an order to consent to a medically necessary procedure that will result in the sterilization of a ward with a mental illness or mental retardation.

The petition to the clerk must, however, contain the following:

1. A sworn statement from a physician licensed in the state of North Carolina who has examined the ward and determined that the proposed procedure is medically necessary, and not for the sole purpose of sterilization, or for the purpose of hygiene or convenience.

   The physician is responsible for determining whether the procedure is a medical necessity, although the statute does not define medical necessity.

2. The name and address of the physician who will perform the procedure.

3. A sworn statement from a psychiatrist or psychologist, licensed in the state of North Carolina, who has examined the ward and determined whether the ward is able to comprehend the nature of the proposed medical procedure, its consequences and can provide informed consent to the procedure.

4. The sworn consent of the ward to the medical procedure, if the ward is able to comprehend the nature of the proposed medical procedure and its consequences, and can give informed consent.

The guardian of the person must obtain a sworn statement from a psychiatrist or psychologist to attach to the petition to the clerk.

Although the ultimate decision about the ward's comprehension is made by a psychiatrist or psychologist, the guardian of the person should discuss the procedure with the ward when the ward has the capacity to make informed choices. The guardian should discuss with the ward the possible risks, benefits, side effects, and consequences of the proposed medical procedure. The discussion should be at a level the ward can comprehend. The guardian must disclose all facts related to the proposed medical procedure to allow the ward to make an informed choice. The guardian should not influence the ward's choice.

The guardian should be able to discuss the following about the proposed medical procedure with the ward:

- What is the proposed medical procedure (in lay terms)?
- Why is the procedure necessary?
- What are the expected outcomes of the proposed procedure?
- What are the risks, benefits, side effects of the proposed procedure?
- What will happen if treatment is denied?
- Are there alternatives to the proposed procedure?
- What are the risks, benefits, side effects of the alternative treatment(s)?
- Is a second opinion necessary?

The guardian must still have the ward examined by a licensed psychiatrist or psychologist whether or not the guardian believes the ward has the capacity to understand the nature of the proposed procedure, its consequences, and can or cannot give informed consent.

If the guardian disagrees with the psychiatrist or psychologist, the guardian, as the surrogate decision maker and advocate for the ward, may seek a second opinion and have the ward examined by a different physician, psychiatrist or psychologist.

Once the petition is filed with the clerk, the clerk will appoint an attorney to represent the ward if the ward is unable to comprehend the nature of the proposed procedure, its consequences, and cannot give informed consent.

The clerk of court is not required to schedule a hearing on the petition, unless the ward or the ward's attorney requests a hearing. If a hearing is held, the clerk may order the appearance of witnesses. The guardian and the ward may also present evidence if the clerk schedules a hearing.

The clerk may enter an order on the petition permitting the guardian to consent to the proposed medical procedure with or without a hearing.

Clerk's Order

The clerk must enter an order permitting the guardian to consent to the proposed medical procedure, if the clerk finds:

- The ward is capable of comprehending the medical procedure and its consequences, and has consented to the procedure; and
- The procedure is medically necessary and is not solely for the purpose of sterilization or hygiene or convenience; or
- The ward is unable to comprehend the medical procedure and its consequences, and cannot give informed consent; and
- The medical procedure is medically necessary and is not solely for the purpose of sterilization or hygiene or convenience.

The guardian, ward, ward's attorney, or any interested party may appeal the clerk's order to the superior court in accordance with the rules of civil procedure.

d. Authority and Responsibility Regarding Death of Ward

(1) Statutory Requirement

(a) None in statutes dealing with guardianship

(b) Statutory provisions regarding disposition of unclaimed bodies

"All dead bodies not claimed for final disposition within 10 days of the decedent's death may be received and delivered by the Commission of Anatomy pursuant to the authority contained in G.S. 130A-33.30 and this Part and in accordance with the rules of the Commission of Anatomy. Upon receipt of a body by the Commission of Anatomy all interests in and rights to the unclaimed dead body shall vest in the Commission of Anatomy. The recipient to which the Commission of Anatomy delivers the body shall pay all expenses for the embalming and delivery of the body, and for the reasonable expenses arising from efforts to notify relatives or others." [G.S. 130A-415(b)]

Should the Commission of Anatomy decline to receive a dead body, the person with possession shall inform the director of social services of the county in which the body is located. The director of social services of that county shall arrange for prompt final disposition of the body, either by cremation or burial. Reasonable costs of disposition and of efforts made to notify relatives and others shall be considered funeral expenses and shall be paid in accordance with G.S. 28A-19-6 and G.S. 28A-19-8. If those expenses cannot be satisfied from the decedent's estate, they shall be borne by the decedent's county of residence. If the deceased is not a resident of this State, or if the county of residence is unknown, those expenses shall be borne by the county in which the death occurred. [G.S. 130A-415(c)]
Any person, including officers, employees and agents of the State or of any unit of local government in the State, undertakers doing business within the State, hospitals, nursing homes or other institutions, having physical

possession of a dead body shall make reasonable efforts to contact relatives of the deceased or other persons who may

wish to claim the body for final disposition. If the body remains unclaimed for final disposition for 10 days, the person having possession shall notify the Commission of Anatomy. Upon request of the Commission of Anatomy, the person having possession shall deliver the dead body to the Commission of Anatomy at a time and placed specified by the Commission of Anatomy or shall permit the Commission of Anatomy to take and remove the body. [G.S. 130A-415(a)].

(2) State Policy

None

(3) Social Work Practice Guidelines

(a) Guardian's Authority After Ward's Death

A guardian's authority is considered to end with the ward's death. Therefore, as a general rule, a guardian of the person or general guardian should not make any decisions or take any actions as guardian after the ward's death; except to prepare the final account and submit this to the clerk for a discharge of responsibility. There also may be instances in which a guardian needs to complete an activity initiated before the ward's death or take action before a personal representative is appointed to prevent adverse effects to the ward's estate. In such instances, the guardian should consult with an attorney and the clerk, and should seek authorization from the clerk to proceed with the needed action.

(b) Notification of Ward's Death

When a ward dies, the guardian should immediately notify the following parties:

1) Any family, friends and others who are known to have an interest in the ward.

2) The clerk of court. The guardian should inform the clerk of whether or not the ward had a will. If there is a will, the guardian should inform the clerk of the name of the executor of the estate. If there is no will, the clerk should be informed of the ward's next of kin or that a public administrator will be needed.

3) The guardian of the estate, if one has been appointed,

4) The Division of Aging and Adult Services for guardianships covered by the DHHS blanket bond.

(c) Burial Arrangements; Disposition of Body

1) Before the ward's death, it is appropriate for the guardian of the person to consult with the guardian of the estate regarding establishment of a pre-need burial contract with a funeral home. The guardian of the estate has responsibility for establishing the contract and for purchasing a burial plot in accordance with the ward's wishes, if known.

2) When no pre-need burial contract has been established and in the absence of family or friends to claim the ward's body, the guardian may wish to make burial arrangements for the ward. As state law permits any interested party to claim a body, the agency may do so, acting as interested party and not in its former capacity as guardian.

3) If no preburial contract has been established and, within 10 days of the ward's death no family or other interested party including the guardian of the person claims the ward's body, the Commission on Anatomy is authorized by state law [G.S. 130A-33.30] to accept unclaimed bodies.

If the Commission on Anatomy does not accept the ward's body, the director of social services in the county where the body is located will be responsible for final disposition. If this is different

from the county of residence, the costs for final disposition will be the responsibility of the county of residence.

(d) Disposing of Ward's Personal Effects

Upon the death of the ward, his personal effects such as clothing, furniture, vehicle(s) should be turned over to the executor of the estate, if one was named by the ward prior to his death. When there is no will and a public administrator has been appointed to manage the estate, the ward's personal effects should be turned over to the administrator. In instances where there is no executor or public administrator, the clerk should be consulted for instructions on the disposition of the ward's personal effects.

(e) Filing of a Will

When a guardian of the person becomes aware that a ward has a will, the guardian should consult with the clerk regarding filing the will with the clerk of court for safe-keeping. The executor of the estate, next of kin and beneficiaries as specified in the will should be informed by the guardian that the will is filed with the clerk.

(f) Accounting to the Clerk

As soon as possible following the ward's death, the ward's personal effects should be turned over to the executor or to the personal representative, if one has been appointed. If there is no executor, or a personal representative has not been appointed, the guardian should consult with the clerk. In any case, the final account must be filed within 60 days of the ward's death.

e. Responsibility to Make Status Reports

(1) Statutory Requirement

(a) "Any corporation or disinterested public agent that is guardian of the person for an incompetent person, within six months after being appointed, shall file an initial status report with the designated agency, if there is one, or with the clerk. Such guardian shall file a second status report with the designated agency or the clerk one year after being appointed, and subsequent reports annually thereafter. The clerk may order any other guardian of the person to file status reports. If a guardian required by this section to file a status report is employed by the designated agency, the guardian shall file any required status report with both the designated agency and the clerk.

Each status report shall be filed under the guardian's oath or affirmation that the report is complete and accurate so far as he is informed and can determine.

A clerk or designated agency that receives a status report shall not make the status report available to anyone other than the guardian, the ward, the court, or State or local human resource agencies providing services to the ward." [G.S. 35A-1242]

(b) Status reports must include:

A report of a recent medical and dental examination of the ward by one or more physicians or dentists,

A report on the guardian's performance of the duties set forth in this Chapter [G.S. Chapter 35A] and in the clerk's order appointing the guardian,

A report of the ward's condition, needs and development. [G.S. 35A-1202(14)]

(2) State Policy

If a designated agency has not been appointed, the guardian shall petition the clerk of court for a designated agency to be appointed to receive status reports.

Any disinterested public agent appointed as general guardian or guardian of the person must file status reports with the designated agency, if one has been appointed. If no designated agency has been appointed, the status reports shall be kept on file by the guardian.

(3) Social Work Practice Guidelines

(a) G.S. 35A or state policy does not offer guidance on how "recent" the dental and medical examinations for the status reports should be. It is recommended that these examinations be done during the period the status report covers.

(b) Examinations are required, however there is flexibility regarding the type of medical professional who may conduct the examination. For example, a ward who has lost his teeth due to disease or illness may not need an examination by a dentist. It may be possible for the physician during the general physical examination to include an examination of the ward's mouth and gums.

In instances where questions arise about these examinations, the clerk of court and/or the designated agency should be consulted.

(c) It is important to remember that the purpose of the status report is to inform the designated agency and/ or the clerk of the ward's condition, needs and what the guardian has done on behalf of the ward. The designated agency's duty is to report to the clerk on how the guardian is carrying out his responsibility to the ward. The status reports sent to the designated agency indicate whether the guardian is acting in the ward's best interest.

(d) If the clerk denies the request to appoint a designated agency, status reports are to be filed with the clerk and kept on file by the guardian.

(e) A sample status report form is in Appendix D.

3. Guardian's Reimbursement for Expenses

a. Statutory Requirement

"A guardian of the person is entitled to be reimbursed out of the ward's estate for reasonable and proper expenditures incurred in the performance of his duties as guardian of the ward's person." [G.S. 35A-1241(b)]

b. State Policy

None

c. Social Work Practice Guidelines

When the ward has an estate which is sufficient to cover the ward's needs and to reimburse the guardian of the person for expenses incurred in carrying out guardianship duties, such reimbursement may be requested from the guardian of the estate. The guardian of the person should keep a detailed account of expenses as documentation of the amount of reimbursement needed.

4. Coordination between Guardian of Person and Guardian of Estate

a. Statutory Requirement

None

b. State Policy

None

c. Social Work Practice Guidelines

(1) When different parties have been appointed guardians of the person and of the estate, they should cooperate in planning and carrying out their respective duties for the ward's benefit.

As described in Paragraph A, of this section, the guardian of the person may be given comprehensive responsibility for the ward's welfare. When the ward needs assistance which will involve expenditure of his funds, the guardian of the person should confer with the guardian of the estate to ascertain that the ward has sufficient funds to cover the expense. Such communication also serves to notify the guardian of the estate of the commitment on the ward's resources.

(2) The clerk of court is the arbiter when there is disagreement between the guardians.

5. Inter-County Cooperation

a. Statutory Requirement

None

b. State Policy

None

c. Social Work Practice Guidelines

(1) Guardianship as a Service

Historically Guardianship has been viewed as merely a legal process with emphasis on who will file the guardianship petition and serve as guardian. Guardianship is a service, rather than just a legal process, similar to other services that are offered to individuals in our communities. Guardianship involves the provision of services to individuals who are alleged to be incompetent adults and their families.

Guardianship Services may be provided to individuals who are alleged to be incompetent and to individuals who are adjudicated incompetent by the court and the director or assistant director is appointed guardian. Any adult alleged to be incompetent or any minor 171/2 years old alleged to be incompetent by reasons other than his/her minority, is eligible to receive services to assess the need for or plan for guardianship. Any individual adjudicated incompetent by the court is also eligible for this service when the court appoints the director or assistant director as guardian.

Guardianship Services include:

(a) The assessment of an individual's need for guardianship

It is not necessary to open a case record for guardianship when the request is for basic information about guardianship, or a referral to appropriate resources, such as the clerk of court or an attorney. For example, a relative of an incapacitated adult contacts an agency and requests information about guardianship on behalf of an adult who can no longer make and communicate her own decisions. The relative is prepared to follow up independently of assistance from the agency, and only needs general information about the guardianship process. The relative is referred to the clerk's office and does not require any additional assistance.

The agency should open a case record when a request for guardianship is received on behalf of an individual alleged to be an incompetent adult and is in need of guardianship services, as defined in this section.

Once a case record is opened for guardianship services a determination needs to be made about whether guardianship is the appropriate alternative to meet the individual's needs, the agency should conduct an assessment to identify the individual's functioning abilities and limitations. The assessment should be conducted with the individual, the individual's family and caregivers. The assessment helps determine what the individual can realistically be expected to do or not do. It helps determine whether the individual's needs can be met through informal, less intrusive means (i.e., family, friends, the community); or more formal means, (i.e., durable power of attorney, health care power of attorney, advance instruction for mental health treatment, representative payee); or whether guardianship is the most appropriate alternative.

(b) Activities aimed at locating the appropriate person(s) to serve as guardian(s)

Part of the provision of this service should include preparing a plan for guardianship. The plan should include specific information to support filing of the petition, and any additional information, such as mental health assessments, or multidisciplinary evaluations to support allegations that the individual is an incompetent adult and is in need of a guardian. The plan should also include the type of guardianship best suited to meet the individual's needs, and who is most appropriate to serve as guardian.

(c) Petitioning or assisting the individual's family in petitioning for the adjudication of incompetence and the appointment of a guardian

The guardianship statute is clear that anyone may file a petition for the adjudication of incompetence and appointment of a guardian. The statute is also very clear that the petition for the adjudication of incompetence may be filed in the county where the respondent (individual alleged to be an incompetent adult) resides, or is domiciled or is an inpatient in a treatment facility. If the county of residence or domicile cannot be determined, venue for the adjudication of incompetence hearing is in the county where the respondent is present. (Refer to Section 6610, D.1. for additional information about the appropriate venue for the adjudication of incompetence hearing.)

The petition for the adjudication of incompetence and appointment of a guardian may be filed by a local human services agency under several circumstances. The agency that accepted the request for guardianship services, conducted an assessment and determined guardianship to be appropriate may file a petition and serve as guardian. The agency may file the petition on behalf of family members who lack the financial means to pay for costs associated with guardianship court proceedings, but have agreed to serve as guardian.

The agency may file a petition on behalf of another agency (i.e., county department of social services, area mental health program, or local health department) that has agreed to serve as guardian. Finally, the agency may file a petition on behalf of a hospital, or long term care facility, and serve as guardian when no individual, or corporation is available to serve.

Since any person may file a petition, the agency is under no legal obligation to file a petition. The agency has the option not to accept a request for guardianship services, nor conduct an assessment or petition on behalf of others (i.e., family members, corporations, hospitals, long term care facilities, or

other local human services agencies) who have knowledge about the individual and can afford costs associated with filing the petition. An agency may decide the latter, for example, when it lacks funding to pay for legal representation associated with guardianship court proceedings. It should be noted that when choosing this option the agency may be appointed guardian in the end, if no individual, corporation or other disinterested public agent is available to serve. When an agency chooses this option, it should make referrals to others who will be able to ensure that the individual's need for guardianship services is met.

(d) Services may also include ongoing casework and contact with the individual, the individual's family, and caregivers when the agency director or assistant director has been appointed guardian
When the agency director has been appointed guardian, guardianship services involve the provision of services to the ward, ward's family, and others involved with the ward's care, comfort, maintenance and over-all well-being. On-going casework involves goal setting, planning services/treatment, monitoring and reassessing the service/treatment plans, and termination of the guardianship, where appropriate. It also involves seeing wards as frequently as is needed and appropriate, and having contact related to the ward's care, comfort and maintenance no less than once every 90 days. (Refer to Section 6620, C. for more information about the Duties As Required by DHHS Administrative Rules.)

(e) Completing required reports to the court.

The guardianship statute and state policy require the guardian to complete specific reports (i.e., status reports, annual accounts, DHHS Blanket Bond) depending upon the type of guardianship appointment. The reporting requirements are an integral part of guardianship service provision and

the on-going casework with wards, wards' families, and caregivers.

(2) Differing Views and Commonly Held Misunderstandings

Agencies have differing views and misunderstandings about Guardianship Service provision. This may lead to a lack of consistency in responses to requests for guardianship services, and a lack of inter-county cooperation and collaboration around guardianship service delivery.

One of the commonly held misunderstandings is that the agency in the county of residence is responsible for providing guardianship services. This is not required by guardianship law, policy, or recommended in social work practice guidelines. This view appears to stem from the perception that when an individual requests Guardianship Services from an agency in a county different from the county where the Medicaid originates, the agency in the county of residence or where the individual's Medicaid originates is responsible for providing guardianship services. This may include petitioning for guardianship.

There are several reasons why the agency in the county where the Medicaid originates may not be the most appropriate one to provide Guardianship Services. Key among these reasons is the fact that the individual requiring this service may not be in close proximity to the agency in the county where the Medicaid originates. The fact that the individual is not in close proximity to the agency in the county where the Medicaid originates may place undue hardship on that agency and may make it difficult to carry out the responsibilities of providing this service.

Additionally, this may also place a hardship on the individual in need of the services. For example, the respondent in a guardianship court proceeding has a right to be present at the hearing on the adjudication of incompetence, to be represented by counsel, to examine and cross-examine witnesses, etc. If the agency in the county where the Medicaid originates files a petition in that county, the respondent's right to due process may be

violated, if distance precludes the respondent from attending the hearing. Although a request may be made to change venue for the adjudication of incompetence hearing to the county where the respondent is located to ensure due process, this is done entirely at the clerk of court's discretion.

The agency in the county where the Medicaid originates may also not be the best choice to serve as guardian because distance may preclude the guardian from being able to carry out the legal duties and responsibilities to the ward.

For example, County A receives a request for Guardianship Services on behalf of an individual who resides in a nursing home in that county. County A conducts an assessment and determines guardianship is the appropriate alternative to meet the requested need, and determines there is no individual or corporation available to serve as guardian. The individual on whose behalf the request for services was made receives Medicaid from County B. County B is located over six hours away from County A. If County A recommends the director or assistant director of County B be appointed guardian, distance may preclude him or her from being able to act in this ward's best interest (e.g., visiting with the ward, and monitoring the ward's care, comfort, and maintenance to ensure the ward's needs are met).

(3) Promoting Inter-County Cooperation and Collaboration

(a) Requests for Guardianship Services

1) When a request for guardianship services is received by an agency in a county that is not the county of residence, or the county where the Medicaid originates for the individual on whose behalf the request for services has been made, the agency that received the request for services should notify the agency in the county of residence that a request has been received.

The agency in the county of residence may assist the agency in the county where the request for services was made with the provision of guardianship services, including conducting an assessment, and when necessary, petitioning for the adjudication of incompetence and the appointment of a guardian, and serving as guardian, as long as this does not pose a hardship for the respondent. The agency in the county of residence may agree to serve as guardian, if no other individual, corporation or other disinterested public agent is available and more appropriate to serve. The agency in the county where the request for guardianship services was received may also serve as guardian. This last option may be the most appropriate because the guardian would be located in close proximity to the ward.

2) When a request for guardianship services is received by an agency in a county that is the county of residence or where the Medicaid originates, but the individual in need of the service is located in a different county, the agency in the county of residence should notify the agency in the county where the individual is located that a request for guardianship services has been received. The agency in the county of residence may request that the other agency assist with providing guardianship services. This assistance may include conducting an assessment, locating others to serve as guardian, and when necessary, filing a petition for the adjudication of incompetence. The agency in the county of residence may serve as guardian when no individual, corporation or other disinterested public agent is available and more appropriate to serve. The agency where the individual is located may also serve as

guardian, when appropriate. The latter is preferred, because it will allow the guardian to be in close proximity to the ward, if the individual remains in the county that is not the county of residence.

3) When a request for guardianship services is received from another source (i.e. hospital, long term care facility), other than a county department of social services, by an agency that is not the county of residence for the individual needing the services, the agency receiving the request may assist with the provision of guardianship services. This may include conducting an assessment, locating the appropriate individual, corporation or disinterested public agent to serve as guardian, and when necessary, petitioning for the adjudication of incompetence. The agency may also serve as guardian. The agency also has the option of referring the request for guardianship services to the agency in the county of residence or where the Medicaid originates, although this may not be in the best interest of the individual in need of the service. The agency should still assist the agency in the county of residence with the provision of guardianship services. Finally the agency receiving the request for guardianship services may assist the hospital, long term care facility, etc. with information about the guardianship process, and referral to the clerk of court's office to file their own petitions, in order to ensure the individual's need for guardianship is met.

4) When guardianship is held by the agency in the ward's county of residence and the ward is located in another county (i.e., in a residential care facility, treatment facility, etc.), the agency in the county of residence should notify the agency in the county

where the ward is located of the guardianship. On request from the agency serving as guardian, the agency in the county where the ward is located should assist, to the extent, possible with visiting the ward and seeing that the ward's needs are met.

5) Some agencies may agree to assist the agency serving as guardian with the provision of guardianship services if reimbursed for staff time. For example, an agency in county A is guardian for a ward who resides in a long term care facility in county B. County A requests the assistance of county B with monitoring the ward's care. County B is a large county with numerous long term care facilities. County B indicates that because many facilities are located in that county, they may receive an inordinate number of requests to assist with the provision of guardianship services from other counties. County B does not have the staff to handle such requests. For this reason, county B requests reimbursement for staff time to assist county A with monitoring the ward's care.

Such arrangements should be coordinated between the agencies involved. Ideally any such arrangements should be written and should detail the reimbursement process. (Refer to Appendix Q, Sample Format for Cooperative Agreements, that may be used to detail these arrangements.)

(b) Developing Written Procedures or Guidelines for Guardianship Service Provision

To promote consistency around guardianship service provision, agencies may choose to develop written procedures or guidelines that indicate how requests for guardianship services will be handled

in their respective counties. These guidelines should be specific and reflect the agencies philosophy around guardianship services delivery. (Refer to Appendix P, for a sample format, Guidelines to Facilitate Inter-County Cooperation Around Guardianship Services Provision that may be used to indicate how requests will be handled.)

(c) Developing Cooperative Agreements

1) Generally agencies are able to provide for the care, comfort, and maintenance required to ensure a ward's well-being, even when the ward resides in another county. On occasion, an agency that is not in close proximity to a ward, may require assistance with the provision of guardianship services from an agency in the county where the ward is located.

It may be in the best interest of the agencies and wards for agencies to develop written agreements that clarify duties and expectations of each agency when agreements are made to assist with the provision of guardianship services for wards. (Refer to Appendix Q, Sample Format for Cooperative Agreements, that may be used to assist with developing cooperative agreements.)

2) The lack of a written agreement should not be viewed as a reason not to cooperate with an agency in the county serving as guardian to ensure a ward's needs are being met. It may be possible to assist in a less formal manner.

For example, the guardian is located in County A, while the ward is located in a facility in County B. County A requested County B assist with monitoring the ward's care, comfort and maintenance.

Although there is no formal agreement, County B agrees to utilize staff, who regularly monitor the facility, to check on whether the ward's needs are being met during their regularly scheduled visits to the facility.

3) Initiating such an agreement should also not be viewed as an attempt by the agency in the county serving as guardian to shift the responsibility for the care, comfort and maintenance for a ward to another county. The guardian is legally mandated to provide for the ward's well-being, and is responsible for all decision making related to the ward. This mandate does not change when a county agrees to assist the county serving as guardian with making sure a ward's needs are being met. All agreements between counties should emphasize the guardian continues to be responsible for decision making on a ward's behalf.

B. Guardian of the Estate

The guardian of the estate is responsible for management of a ward's financial resources, including income, real and personal property. As outlined in this section, management of the estate may involve decision-making and actions on a wide range of complex financial matters. As discussed in Section 6610, an attorney or corporation chartered to act in a fiduciary capacity may be recommended for appointment as guardian of the estate when there is no qualified relative or other appropriate individual to serve in this capacity.

Because of the nature of the guardian of the estate's duties, when a disinterested public agent is appointed guardian of the estate, arrangements should be made for consultation with experts in financial matters. Depending on the nature of the ward's resources and actions which may need to be taken regarding their management and/or liquidation, consultation may be needed from an attorney, an accountant, or an investment counselor, etc.

Payment for such consultation may be made from the ward's estate if the ward has sufficient resources to cover the cost. If the ward does not have sufficient resources to cover the cost of consultation, an effort should be made to identify experts who can provide consultation at no charge (i.e. the agency attorney, Legal Services, etc.).

The disinterested public agent appointed as guardian of the estate should exercise care in delegating responsibility for managing a ward's financial resources to agency staff. Such responsibility should be assigned only to staff who are knowledgeable and experienced in this area. The agency should have policies and procedures for staff to communicate with the guardian regarding any issue about the ward's estate.

1. Clerk's Order

a. Statutory Requirement

(1) "When appointing a guardian, the clerk shall enter an order setting forth:

(a) The nature of the guardianship or guardianships to be created and the name of the person or entity appointed to fill each guardianship; and

(b) The powers and duties of the guardian or guardians, which shall include, unless the clerk orders otherwise, (i) with respect to a guardian of the person and general guardian, the powers and duties provided under G.S. 35A, Article 8, and (ii) with respect to a guardian of the estate and general guardian, the powers and duties provided under G.S. 35A, Article 9 and Subchapter III; and

(c) The identity of the designated agency if there is one.

The clerk may order that the ward retain certain legal rights and privileges to which he was entitled before he was adjudged incompetent; provided, any such order shall include findings as to the nature and extent of the ward's incompetence as it relates to the ward's need for a guardian or guardians. The clerk shall issue the guardian or guardians letters of appointment as provided in G.S. 35A-1206."[G.S. 35A-1215(c)]

(2) "Whenever a guardian has been duly appointed and qualified under this Subchapter, the clerk shall issue to the guardian letters of appointment signed by the clerk and sealed with the clerk's seal of office. In all cases, the clerk shall specify in the order and letters of appointment whether the guardian is a guardian of the estate, a guardian of the person, or a general guardian." [G.S. 35A-1206]

b. State Policy

None

c. Social Work Practice Guidelines

The guardian of the estate should have a written order from the clerk. The guardian's authority over the ward's estate is as specified in the order.

2. Authority and Responsibility of Guardian of the Estate

a. Management of Ward's Estate

(1) Statutory Requirement

"A guardian of the estate or general guardian shall have all the powers and duties under this Article [Article 9, G.S. Chapter 35A] unless those are inconsistent with the clerk's order appointing a guardian, in which case the clerk's order shall prevail." [G.S. 35A-1250]

A general guardian or guardian of the estate has the power to perform in a reasonable and prudent manner every act that a reasonable and prudent person would perform incident to the collection, preservation, management, and use of the ward's estate to accomplish the desired result of administering the ward's estate legally and in the ward's best interest, including but not limited to the following specific powers:" [G.S. 35A-1251]

(a) Possession of Ward's Estate

The guardian shall "take possession, for the ward's use, of all the ward's estate, as defined in G.S. 35A-1202(5)." [G.S. 35A-1251(1)].

'Estate' means any interest in real property, chooses in action, intangible personal property, and tangible personal property, and includes any interest in joint accounts or jointly held property." [G.S. 35A-1202(5)]

(b) Management of Assets; Contracts

The guardian has the power:

1) "To receive assets due the ward from any source." [G.S. 35A-1251(2)]

2) "To insure the ward's assets, against damage or loss, at the expense of the ward's estate. [G.S. 35A-1251(7)]

3) "To complete performance of contracts entered into by the ward that continue as obligations of the ward or his estate, or to refuse to complete the contracts, as the guardian determines to be in the ward's best interests, taking into account any cause of action that might be maintained against the ward for failure to complete the contract." [G.S. 35A-1251(4)]

(c) Acquisition, Management and Disposal of Property; Investments

The guardian has the power:

1) "To acquire and retain every kind of property and every kind of investment, including specifically, but without in any way limiting the generality of the foregoing, bonds, debentures, and other corporate or governmental obligations; stocks, preferred or common; real estate mortgages; shares in building and loan associations or savings and loan associations; annual premium or single premium life, endowment, or annuity contracts; and securities of any management type investment company or investment trust registered under the Federal Investment Company Act of 1940, as from time to time amended." [G.S. 35A-1251(16)]

2) "To abandon or relinquish all rights in any property when, in the guardian's opinion, acting reasonably and in good faith, it is valueless, or is so encumbered or is otherwise in such condition that it is of no benefit or value to the ward or his estate." [G.S. 35A-1251(5)]

3) "To foreclose, as an incident to the collection of any bond, note or other obligation, any mortgage, deed of trust, or other lien securing such bond, note or other obligation, and to bid in the property at such foreclosure sale, or to acquire the property by deed from the mortgagor or obligor without foreclosure; and to retain the property so bid in or taken over without foreclosure." [G.S. 35A-1251(18)]

4) "To vote shares of stock or other securities in person or by general or limited proxy, and to pay sums chargeable or accruing against or on account of securities owned by the ward." [G.S. 35A-1251(6)]

5) "To sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise." [G.S. 35A-1251(11)]

6) "To sell, lease or exchange any of the ward's personal property including securities, provided that the aggregate value of all items of the ward's personal property sold without court order over the duration of the estate shall not exceed one thousand five hundred dollars ($1,500) a guardian may sell the item only as provided in subdivision (17) b. [G.S. 35A-1251 (17)a]

(d) Payment of Expenses; Management of Debts and Obligations

The guardian has the power:

1) "To pay the ward's debts and obligations that were incurred prior to the date of adjudication of incompetence or appointment of a guardian when the debt or obligation was incurred for necessary living expenses or taxes; or when the debt or obligation involves a specific lien on real or personal property, if the ward has an equity in the property on which there is a specific lien; or when the guardian is convinced that payment of the debt or obligation is in the best interest of the ward or his estate." [G.S. 35A-1251(8)]

2) "To renew the ward's obligations for the payment of money. The guardian's execution of any obligation for the payment of money pursuant to this subsection shall not be held or construed to be binding on the guardian personally." [G.S. 35A-1251(9)]

3) "To pay taxes, assessments, and other expenses incident to the collection, care, administration, and protection of the ward's estate." [G.S. 35A-1251(10)]

4) "To expend estate income on the ward's behalf and to petition the court for prior approval of expenditures from estate principal." [G.S. 35A-1251(12)]

5) "To pay from the ward's estate necessary expenses of administering the ward's estate." [G.S. 35A-1251(13)]

6) "To borrow money for any periods of time and upon such terms and conditions as to rates, maturities, renewals, and security as the guardian shall deem advisable, including the power of a corporate guardian to borrow from its own banking department, for the purpose of paying debts, taxes, and other claims against the ward, and to mortgage, pledge, or otherwise encumber that portion of the ward's estate as may be required to secure the loan or loans; provided, in respect to the borrowing of money on the security of the ward's real property, Subchapter III of this Chapter(Chapter 35) is controlling." [G.S. 35A-1251(19)]

(e) Use of Land; Operation of Business

The guardian has the power:

1) "To continue any business or venture or farming operation in which the ward was engaged, where such continuation is reasonably necessary or desirable to preserve the value, including goodwill, of the ward's interest in the business." [G.S. 35A-1251(15)]

2) "To lease any of the ward's real estate for a term of not more than three years. [G.S. 35A-1251(17)a.]

(f) Actions on Ward's Behalf

The guardian has the power:

"To maintain any appropriate action or proceeding to recover possession of any of the ward's property, to determine the title thereto, or to recover damages for any injury done to any of the ward's property; also, to compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle

any other claims in favor of or against the ward." [G.S. 35A-1251(3)]

(g) Employment of Experts

The guardian has the power:

"To employ persons, including attorneys, auditors, investment advisors, appraisers, or agents to advise or assist him in the performance of his duties as guardian." [G.S. 35A-1251(14)]

(h) Execution of Instruments

The guardian has the power:

"To execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the guardian. [G.S. 35A-1251(20)]

(2) State Policy

None

(3) Social Work Practice Guidelines

(a) In managing a ward's estate, the guardian should refer to specific requirements in law. Because of the nature of the responsibilities of the guardian of the estate, the guardian should consult with a party knowledgeable and experienced in managing real estate and with the clerk of court where there is any question about how the estate should be managed.

(b) The guardian should take any practicable action needed to enforce the ward's rights against others.

(c) The guardian should exercise due diligence in collecting obligations and money owed or due the ward, including collecting damages for wrongs done to the ward which are known to the guardian.

b. Advancements of Surplus Income to Certain Parties

(1) Statutory Requirement

(a) "When any incompetent person of full age and not having made a valid will, has children or grandchildren (such grandchildren being the issue of a deceased child) and is possessed of an estate, real or personal, whose annual income is more than sufficient abundantly and amply to support himself, and to support, maintain and educate the members of his family, with all the necessaries and suitable comforts of life, it is lawful for the clerk of the superior court for the county in which such person has his residence to order from time to time, and so often as may be judged expedient, that fit and proper advancements be made, out of the surplus of such income, to any such child, or grandchild, not being a member of his family and entitled to be supported, educated and maintained out of the estate of such person.

Whenever any incompetent person of full age, not being married and not having issue, be possessed, or his guardian be possessed for him, of any estate, real or personal, or of an income which is more sufficient amply to provide for such person, it shall be lawful for the clerk of the superior court for the county in which such person resided prior to incompetency to order from time to time, and so often as he may deem expedient, that fit and proper advancements be made, out of the surplus of such estate or income, to his or her parents, brothers and sisters, or grandparents to whose support prior to his incompetency, he contributed in whole or in part." [G.S. 35A-1321]

(b) "When such incompetent person is possessed of a real or personal estate in excess of an amount more than sufficient to abundantly and amply support himself with all the necessaries and suitable comforts of life and has no minor children nor immediate family dependent upon him for support, education or maintenance, such advancements may be made out of such excess of the principal of his estate to such child or grandchild of age for the better promotion or advancement in life or in business of such child or grandchild: Provided, that the order for such

advancement shall be approved by the resident or presiding judge of the district who shall find the facts in said order of approval". [G.S. 35A-1322]

(c) "In every application for such advancements, the guardian of the incompetent person and all such other persons shall be parties as would at that time be entitled to a distributive share of his estate if he were then dead." [G.S. 35A-1324]

(d) "The clerk, in ordering such advancements, shall, as far as practicable, so order the same as that, on the death of the incompetent person, his estate shall be distributed among his distributees in the same equal manner as if the advancements has been made by the person himself; and on his death every sum advanced to a child or grandchild shall be an advancement, and shall bear interest from the time it may be received." [G.S. 35A-1325]

(2) State Policy

None

(3) Social Work Practice Guidelines

Advancements may be a means of carrying out a ward's wishes regarding disposition of certain personal belongings as well as income over and above the amount needed for the ward's care. As indicated in the statutes, court authorization must be obtained for advancements to be made.

3. Coordination with Guardian of the Person

a. Statutory Requirement

None

b. State Policy

None

c. Social Work Practice Guidelines

(1) When there are guardians of the estate and of the person, the guardians should cooperate in planning and carrying out their respective duties for the ward's benefits.

(2) The guardian of the estate is responsible for providing funds to the guardian of the person to use in meeting the ward's needs.

(3) The clerk of court is the arbiter when there is disagreement between the guardians.

4. Responsibilities on Death of Ward

a. Statutory Requirement

The guardian of the estate is required by law to file a final accounting with the clerk. (See paragraph 5 below)

b. State Policy

None

c. Social Work Practice Guidelines

A guardian's authority is considered to end with the ward's death. Therefore, as a general rule, a guardian should not make any decision or take any actions as guardian after the ward's death. However, there may be instances in which a guardian needs to complete an activity initiated before the ward's death or take action before a personal representative is appointed, to prevent adverse effects to the ward's estate. In such instances, the guardian should consult with an attorney and the clerk, and should seek authorization from the clerk about whether the guardian should proceed with the needed action.

5. Responsibility to File Accounts with the Clerk of Court

a. Statutory Requirement

(1) Return Within Three Months After Appointment

"Every guardian, within three months after his appointment, shall file with the clerk an inventory or account, upon oath, of the estate of his ward; but the clerk may extend such time not exceeding six months, for good cause shown." [G.S. 35A-1261]

In cases of default to file the inventory or account required by G.S. 35A-1261, the clerk must issue an order requiring the guardian to file the inventory or account within the time specified in the order, or to show cause why he should not be removed from office or held in civil contempt, or both. If after due service of the order, the guardian does not, within the specified time in the order, file such inventory or account, or obtain further time to file the same, the clerk may remove him from office, hold him in civil contempt as provided in Article 2 of Chapter 5A, or both. The guardian shall be personally liable for the costs of any proceeding incident to his failure to fill the inventory or account required by G.S. 35A-1261. Such costs shall be taxed against him by the clerk and may be collected by deduction for any commissions that may be found due the guardian upon final settlement of the estate [G.S. 35A-1262)]

(2) Accounting of Additional Property

Whenever further property of any kind not included in any previous return, comes to the hands or knowledge of any guardian, he must cause the same to be returned within three months after the possession of discovery thereof; and the making of such return of new assets, from time to time, may be enforced in the same manner as prescribed in G.S. 35A-1262. [G.S. 35A-1263]

(3) Annual Account

Every guardian shall within 30 days after the expiration of one year from the date of his qualification or appointment,

and annually, so long as any of the estate remains in his control, file in the office of the clerk an inventory and account, under oath, of the amount of property received by him, or invested by him, and the manner and nature of such investment, and his receipts and disbursements for the past year in the form of debit and credit. The guardian shall produce vouchers for all payments or verified proof for all payments in lieu of vouchers. The clerk may examine on oath such accounting party, or any other person concerning the receipts, disbursements or any other matter relating to the estate; and having carefully revised and audited such account, if he approves the same, he must endorse his approval thereon, which shall be deemed prima facie evidence of correctness. [G.S. 35A-1264].

If any guardian omits to account, as directed in G.S. 35A-1264, or renders an insufficient and unsatisfactory account, the clerk shall forthwith order such guardian to render a full and satisfactory account, as requested by law, within 20 days after service of the order. Upon return of the order, duly served, if the guardian fails to appear or refuses to exhibit such account, the clerk may issue an attachment against him for contempt and commit him until he exhibits such account, and may likewise remove him from office. In all proceedings hereunder the defaulting guardian will be liable personally for the costs of the said proceedings, including the costs of service of all notices or writs incidental to, or thereby acquiring, and also including reasonable attorney fees and expenses incurred by a successor guardian or other person in bringing any such proceeding, or other proceedings deemed reasonable and necessary to discover or obtain possession of assets of the ward in the possession of the defaulting guardian should have turned over to the successor guardian. The amount of the costs and attorney fees and expenses of such proceeding may be deducted from any commissions which may be found due said guardian on settlement of the estate. [G.S. 35A-1265(a)]

(4) Final Account

Within 60 days after a guardianship is terminated under G.S. 35A-1295, the guardian shall file a final account for

the period from the end of the period of his most recent annual account to the date of that event. [G.S. 35A-1266]

(5) Exhibits of Investments and Bank Statements

At the time the accounts required by this Article and other provisions of law are filed, the clerk shall require the guardian to exhibit to the court all investments and bank statements showing cash balance, and the clerk shall certify on the original account that an examination was made of all investments and the cash balance, and that the same are correctly stated in the account: Provided, such examination may be made by the clerk in the county in which such guardian resides of the county in which such securities are located. [G.S. 35A-1268]

b. State Policy

Any disinterested public agent appointed as general guardian or guardian of the estate must file financial reports with the clerk of superior court in accordance with G.S. 35A-1253.

c. Social Work Practice Guidelines

(1) The guardian should keep all cancelled checks, receipts, bills and other documentation of transactions regarding the ward's estate, and should consult with the clerk of court on the specific types of records which should be kept.

Separate bank accounts should be established for each guardianship in order to provide a clear record of transactions, interest accrued, etc., for the estate of each ward.

(2) The Administrative Office of the Courts has developed a standard form for accounting to the clerk. The copy of the form, AOC-506, Account, is in Appendix F.

6. Guardian's Disbursements; Commissions

a. Statutory Requirement

"Every guardian may charge in his annual account all reasonable disbursements and expenses; and if it appear that he has really and bona fide disbursed more in one year than the profits of the ward's estate, for his education and maintenance, the guardian shall be allowed and paid for the same out of the profits of the estate in any other year; but such disbursements must in all cases, be suitable to the degree and circumstances of the estate of the ward." [G.S. 35A-1267]

The clerk shall allow commissions to the guardian for his time and trouble in the management of the ward's estate, in the same manner and under the same rules and restrictions as allowances are made to executors, administrators and collectors under the provisions of G.S. 28A-23-3 and 4. [G.S. 35A-1269]

Personal representatives, collectors or public administrators shall be entitled to commissions to be fixed in the discretion of the clerk of superior court not to exceed five percent (5%) upon the amounts of receipts, including the value of all personal property when received, and upon the expenditures made in accordance with law, which commissions shall be charged as a part of the costs of administration and, upon allowance, may be retained out of the assets of the estate against creditors and all other persons claiming an interest in the estate. Provided, however, when the gross value of an estate is two thousand dollars ($2,000) or less, the clerk of superior court is authorized and empowered to fix the commission to be received by the personal representative, collector or public administrator in an amount as he, in his discretion, deems just and adequate.

In determining the amount of such commissions, both upon personal property received and upon expenditures made, the clerk of superior court shall consider the time, responsibility, trouble and skill involved in the management of the estate. Where real property is sold to pay debts or legacies, the commission shall be computed only on the proceeds actually applied in the payment of debts or legacies. [G.S. 28A-23-3(a-b)]

b. State Policy

None

c. Social Work Practice Guidelines

When a ward has an estate sufficient enough to cover his needs and to provide sufficient excess funds to enable a fee to be paid for the guardian's time, effort and skill involved in managing the estate, such a fee may be paid. As stated in law, the clerk of court establishes the fee.

The guardian may request reimbursement for time and effort in managing the ward's estate by means of petition to the clerk of superior court. The petition is usually made at the time the annual accounting is submitted to the clerk or at a later date. The petition requesting reimbursement should set out why such fees are being requested. The clerk of court sets the fees and should be contacted for information on additional procedures required for reimbursement to the guardian.

C. Duties As Required by Department of Health and Human Services Administrative Rules

1. Statutory Requirement

The Secretary of the Department of Health and Human Services shall adopt rules concerning the guardianship responsibilities of disinterested public agents. The rules shall provide, among other things, that disinterested public agents shall undertake or have received training concerning the powers and responsibilities of guardians. [G.S. 35A-1216]

2. State Policy

a. The guardian must see the ward as frequently as needed and appropriate.

b. The guardian must have contact related to the ward no less than once every 90 days.

c. The guardian shall have received or shall obtain training on the responsibilities of a guardian.

d. When he ceases to qualify as a disinterested public agent, the guardian shall notify the clerk who will then appoint a successor guardian.

3. Social Work Practice Guidelines

a. The guardian is required to see the ward as frequently as is necessary to ensure the ward's needs are being met. When distance prevents the guardian from seeing the ward, the guardian should request assistance from the agency in the county where the ward is located to visit with the ward. (Refer to Section 6220, page 24 for information on Inter-County Cooperation)

b. The guardian is also required to have contact related to the ward no less than every 90 days. This may include telephone conversations with the ward and/or the ward's family/caregivers to monitor the ward's activities. This may also include on-site conferences with the ward's caregivers when appropriate.

c. The disinterested public agent is required to receive training concerning his powers and responsibilities as guardian. The Division of Aging and Adult Services is responsible for providing this training.

d. A disinterested public agent serves in the capacity as guardian by virtue of his office or employment. When the disinterested public agent guardian's office or employment terminates, his successor in that office succeeds him. The disinterested public agent guardian is required to notify the clerk of the need to appoint a successor guardian when he no longer qualifies to serve as disinterested public agent guardian.

IV. Liability of the Guardian

Protection from liability involves knowing exactly what one's responsibilities are as guardian and exercising reasonable care and acting in good faith in carrying out those responsibilities. This section includes statutes which address liability of guardians in carrying out responsibilities regarding the person and the estate of the ward and related information.

A. Guardian of the Person

1. Statutory Requirement

A guardian of the person, if he has acted within the limits imposed on him by this Article or the order of appointment or both, shall not be liable for damages to the ward or the ward's estate, merely by reason of the guardian's:

a. authorizing or giving any consent or approval necessary to enable the ward to receive legal, psychological, or other professional care, counsel, treatment, or service, in a situation where the damages result from the negligence or other acts of a third person: or

b. authorizing medical treatment or surgery for his ward, if the guardian acted in good faith and was not negligent. [G.S. 35A-1241(c)]

2. State Policy

None

3. Social Work Practice Guidelines

a. Reference should be made to Section 6620 for Statutory Requirements and Social Work Practice Guidelines regarding the authority and responsibility of the guardian of the person and to Section 6650 for Statutory Requirements and Social Work Practice Guidelines on record-keeping.

b. The guardian's liability may be limited by consulting with experts, i.e. physician, psychologist, attorney, etc., as appropriate and seeking the clerk's concurrence when there are questions about the appropriate action to take for a ward.

B. Guardian of the Estate

1. Statutory Requirement

"If any guardian allows his ward's lands to be sold for nonpayment of taxes or assessments, he shall be liable to his ward for the full value thereof." [G.S. 35A-1253(3)]

"If any guardian omits to account, as directed in G.S. 35A - 1264, or renders an insufficient and unsatisfactory account, the clerk shall forthwith order such guardian to render a full and satisfactory account, as required by law, within 20 days after service of the order. Upon return of the order, duly served, if the guardian fails to appear or refuses to exhibit such account, the clerk may issue an attachment against him for contempt and commit him until he exhibits such account, and may like-wise remove him from office. In all proceedings here-under the defaulting guardian will be liable personally for the costs of the said proceedings, including the costs of service of all notices or writs incidental to, or thereby acquiring, or the amount of the costs of such proceeding may be deducted from any commissions which may be found due said guardian on settlement of the estate." [G.S. 35A-1265(a)]

2. State Policy

None

3. Social Work Practice Guidelines

a. The guardian of the estate, general guardian or guardian of the person (in receiving funds from the guardian of the estate and using the funds to meet the ward's personal needs) should be able to demonstrate on request that the ward's financial resources are used properly, i.e., that there has been no misuse of the ward's resources.

b. Reference should be made to Section 6620 for Statutory Requirements and Social Work Practice Guidelines regarding the authority and responsibility of the guardian of the estate and to Section 6650 for Statutory Requirements and Social Work Practice Guidelines on record-keeping.

c. The guardian's liability may be limited by consulting with experts, i.e. attorney, accountant, the clerk, etc., as appropriate regarding management of the ward's estate.

C. Delegation of Duties of Staff

1. Statutory Requirement

None

2. State Policy

None

3. Social Work Practice Guidelines

Day-to-day guardianship duties usually are carried by agency staff rather than the agency director or assistant director who is named as guardian. In carrying out these duties, staff act as agents of the director or assistant director guardian. Negligence of staff could result in liability of the guardian and the county. Staff could be considered to be acting as public employees with the result that the employer would be responsible.

V. Bonds and Insurance

A. Bond

1. Who Must Post Bond

a. Statutory Requirement

"No general guardian or guardian of the estate shall be permitted to receive the ward's property until he has given sufficient surety, approved by the clerk, to account for and apply the same under the direction of the court. The clerk shall not require a guardian of the person who is a resident of North Carolina to post a bond. The clerk may require a nonresident guardian of the person to post a bond or other security for the faithful performance of the guardian's duties." [G.S. 35A-1230]

"The Secretary of the Department of Health and Human Services shall require or purchase individual or blanket bonds for all disinterested public agents appointed to be guardians, whether they serve as guardians of the estate, guardians of the person or general guardians, or one blanket bond covering all agents, the bond or bonds to be conditioned upon faithful performance of their duties as guardians and made payable to the State. The premiums shall be paid by the State." [G.S. 35A-1239]

b. State Policy

None

c. Social Work Practice Guidelines

(1) A bond, in the guardianship context, is a contract whereby the person who is bonded (the guardian or someone on his behalf) pays a premium to the bond provider (usually an insurance or surety company) as consideration for the bond provider's promise to compensate someone else (the ward) who suffers financial loss as a result of the guardian's failure to properly exercise his duties to the ward. While a bond may be considered a form of insurance, it is not the same as liability insurance. (See Paragraph B.) The bond is required to be posted for the protection of the ward and the ward's estate—to compensate the ward if the guardian

squanders or otherwise misapplies the assets of the ward's estate. A bond provider that is required to make payment to a ward under the terms of a bond will have a claim against the guardian for the amount paid. (This is similar to an appearance bond posted by a criminal defendant. If the defendant fails to appear in court as required, the bonding company forfeits the amount of bond but will have a claim against the defendant for the amount forfeited.)

(2) There is no statutory provision for the clerk to require a guardian of the person to post a bond; however, DHHS must require or purchase bonds for all disinterested public agents appointed as guardian, including guardian of the person (G.S. 35A-1239). Thus, when a disinterested public agent is guardian of the person only, the clerk may not require a bond and has no role in regard to setting a bond. The guardian and DHHS are responsible for seeing that the bond is provided. See Paragraph 3, page 5 of this section for information about DHHS's blanket bond for disinterested public agents.

2. Terms, Conditions and Payment of Bond

a. Statutory Requirement

(1) The bond must be payable to the state. The clerk shall determine the value of all the ward's personal property and the rents and profits of the ward's real estate by examining under oath, the applicant for guardianship or any other person or persons. [G.S. 35A-1231(a)]

(a) Where the bond is executed by personal sureties, the penalty must be at least double the value so determined by the clerk;

(b) If the bond is executed by a duly authorized surety company, the penalty may be fixed at not less than one and one-fourth times the value so determined by the clerk;

(c) Provided, however, the clerk may accept bond in estates where the value determined by the clerk exceeds the sum of $100,000, in a sum equal to one

hundred and ten percent (110%) of the determined value. [G.S. 35A-1231(a)]

(2) When it appears that the ward's estate includes money that has been or will be deposited in a bank in this State or invested in an account in an insured savings and loan association upon condition that the money or securities will not be withdrawn except on authorization of the court, the court may, in its discretion, order that the money be so deposited or invested and exclude such deposited money from the computation of the amount of the bond or reduce the amount of the bond in respect of such money to such an amount as it may deem reasonable.

The applicant for letters of guardianship may deliver to any such bank or association any such money in his possession or may allow such bank or association to retain any such money already deposited or invested with it; in either event, the applicant shall secure and file with the court a written receipt including the agreement of the bank or association, duly acknowledged by an authorized officer of the bank or association, that the money shall not be allowed to be withdrawn except on authorization of the court. In so receiving and retaining such money, the bank or association shall be protected to the same extent as though it had received the same from a person to whom letters of guardianship had been issued.

The term 'account in an insured savings and loan association' as used in this section means any account in a savings and loan association that is insured by the Federal Deposit Insurance Corporation, by the Federal Savings and Loan Insurance Corporation, or by a mutual deposit guaranty association authorized by Article 7A of Chapter 54 of the North Carolina General Statutes.
The term 'money' as used in this section means the principal of the ward's estate and does not include the income earned by the principal which may be withdrawn without any authorization of the court. [G.S. 35A-1232]

(3) If the court orders a sale of the ward's real property, or if the guardian expects or offers to sell personal property that he knows or has reason to know has a value greater than

the value used in determining the amount of the bond posted, the guardian shall, before receiving the proceeds of the sale, furnish bond or increase his existing bond to cover the proceeds if real estate is sold, or to cover the increased value if personal property is sold. The bond, or the increase in the existing bond, shall be twice the amount of the proceeds of any real property sold, or of the increased value of any personal property sold, except where the bond is executed by a duly authorized surety company, in which case the penalty of the bond need not exceed one and one-fourth times the amount of the real property sold or the increased value of the personal property sold." [G.S. 35A-1231(b)]

(4) "When a guardian has disbursed either income or income and principal of the estate according to law, for the purchase of real estate or the support and maintenance of the ward or the ward and his dependents or any lawful cause, and when the personal assets and income of the estate from all sources in the hands of the guardian have been diminished, the penalty of the guardian's bond may be reduced in the discretion of the clerk to an amount not less than the amount that would be required if the guardian were first qualifying to administer the personal assets and income." [G.S. 35A-1233]

(5) The bond must be secured with two or more sufficient sureties, jointly and severally bound, and must be acknowledged before and approved by the clerk. The bond must be conditioned on the guardian's faithfully executing the trust reposed in him as such and obeying all lawful orders of the clerk or judge relating to the guardianship of the estate committed to him. The bond must be recorded in the office of the clerk appointing the guardian, except, if the guardianship is transferred to a different county, it must be recorded in the office of the clerk in the county where the guardianship is docketed. [G.S. 35A-1231(a)]

(6) The guardian of the estate or general guardian has the power "To pay from the ward's estate necessary expenses of administering the ward's estate." [G.S. 1251(13)] This includes the cost of the bond premium.

b. State Policy

None

c. Social Work Practice Guidelines

The amount of the bond should be adjusted if the value of the estate changes. The law specifically provides for reduction in the bond if the estate is diminished. If the estate increases in value, the amount of the bond should be increased accordingly. A request for a change in the required bond may be made with the annual accounting to the clerk or at the time of any significant change in the estate such as sale of real estate or an inheritance by the ward.

The ward's funds may be used to pay the cost of the bond premium.

3. DHHS Blanket Bond

a. Statutory Requirement

"The Secretary of the Department of Health and Human Services shall require or purchase individual or blanket bonds for all disinterested public agents appointed to be guardians whether they serve as guardians of the estate, guardians of the person, or general guardians, or one blanket bond covering all agents, the bond or bonds to be conditioned upon faithful performance of their duties as guardians and made payable to the State. The premiums shall be paid by the State." [G.S. 35A-1239]

b. State Policy

None

c. Social Work Practice Guidelines

(1) The Secretary of DHHS has purchased, in accordance with G.S. Chapter 35A, a blanket bond for all disinterested public agents appointed as guardians. This bond provides coverage whether they are appointed to serve as guardians of the person, estate or general guardians.

(2) A minimum of $3,000.00 coverage is provided for each guardianship under the blanket bond. For wards who have a disinterested public agent serving as guardian of the estate or general guardian and whose estates exceed $3,000.00 in value, the blanket bond coverage must be fixed at not less than 1 ¼ times the estate value. To determine the estate value consider the amount of all of the ward's personal property (i.e., monthly income, cash on hand, jewelry, furniture, etc.). Use the value of the real property in calculating the bond only when the guardian has an Oder from the court giving permission to sell the property. Please note when determining the estate value, all monthly income should be computed on an annual amount. For example, A ward receives $350.00 Veteran's benefits per month, and $400.00 Social Security benefits per month for a total $750.00 per month or $9,000.00 annually. The ward has no real property. The ward's estate value is $9,000.00. The bond amount is 11/4 times the amount of the estate value or $11,250.00.

(3) A guardianship is covered by the blanket bond when DHHS receives notice (Form DHHS-7016, Appendix C) from the disinterested public agent guardian. Confirmation of blanket bond coverage is sent to the guardian, with a copy to the clerk of court for guardianship of the estate or general guardianship.

(4) If the disinterested public agent serves as guardian of the estate or general guardian, the guardian may meet the requirement for bond coverage by using the ward's funds to purchase a private bond from an authorized surety, as allowed in [G.S. 1251(13)]. The ward's resources must be sufficient to cover both the cost of the premium on the bond and meet the ward's needs.

(5) DHHS should be notified promptly of the termination of a guardianship covered by the blanket bond and of any change in the guardianship that may affect the bond. Disinterested public agents should have procedures in place to assure prompt communications with DHHS regarding:

- Amount of the bond; or
- Identity of the ward and guardian; or

- Need for increases in the amount of bond coverage; or
- Opportunity for decreases in the amount of the bond, the death of the ward; or
- Termination of the guardianship due to restoration of the ward's competence, death of the ward or for any other reason.

4. Posting of Bond

a. Statutory Requirement

No general guardian or guardian of the estate shall be permitted to receive the ward's property until he has given sufficient surety, approved by the clerk, to account for and apply the same under the direction of the court.

The clerk shall not require a guardian of the person who is a resident of North Carolina to post a bond; the clerk may require a nonresident guardian of the person to post a bond or security for the faithful performance of the guardian's duties. [G.S. 35A-1230]

b. State Policy

None

c. Social Work Practice Guidelines

As guardians of the person are not required by the clerk to post a bond, such guardians are expected by the clerk to assume their responsibilities immediately (without waiting for confirmation that the bond has been posted).

It is the guardian's responsibility to notify the Division of Aging and Adult Services and request bond coverage independent of the appointment as guardian. Bond coverage is always required for wards served by disinterested public agent guardians.

A bond is purchased by DHHS based on the individual ward's circumstances. When the ward's resources are insufficient to pay for the cost of the premium on a bond, DHHS purchases the bond. When the ward's resources are sufficient to cover the cost of a premium on a bond, the requirement for coverage under G.S. 35A-1239 is met by using the ward's funds to purchase the bond.

The bond, in the context of guardianship, is required to be posted for the protection of the ward's estate and to compensate the ward in the event of financial loss as a result of the guardian's failure to properly administer the ward's estate. It is protection for the ward, not the guardian, and is therefore considered an expense to be paid by the ward when he has the resources to do so.

B. Liability Insurance

1. Purpose of Insurance

a. Statutory Requirement

None

b. State Policy

None

c. Social Work Practice Guidelines

Liability insurance is obtained for the protection of the insured, for instance the guardian, who obtains insurance coverage or for whom it is obtained. Exact terms of liability insurance policies will vary, but such insurance is generally to cover the cost of any amount for which the insured is found to be liable, with a scope of activities defined in the policy, and also to cover the cost of representation and other expenses of litigation. As with any insurance, the amount of premiums will vary depending on the extent of coverage and the risks of liability.

2. Obtaining Liability Insurance Coverage

a. Statutory Requirement

None

b. State Policy

None

c. Social Work Practice Guidelines

Service as a guardian is only one of many activities for which the director (and other employees) should be concerned about having liability insurance. Because guardianship involves special fiduciary duties and may involve handling substantial funds or assets, it is an area of particular importance. A director who is covered by insurance should make sure that his activities as guardian are within the scope of the policy's coverage. Neither the state nor the county has a statutory duty to provide liability insurance for the directors or any other social services employee. County commissioners may elect to provide coverage for county employees and officials under G.S. 153A-97 and G.S. 160-167.

It is critical that directors inquire as to whether the commissioners in their counties have acted pursuant to these sections to provide protection for county employees who are sued and , if they have, the precise terms of such protection as they apply to the director's activities. The county may provide, through insurance or through appropriations, to cover litigation expenses and/or to pay civil judgments incurred against an employee for actions or omissions in the scope of his employment.

However, the county must have adopted uniform standards under which claims or judgments will be paid and the employee must give notice of the claim or litigation to the county commissioners before a claim is paid or judgment is entered. Since the terms of county policies in this regard or of insurance policies obtained by counties may vary considerably, directors should determine the precise terms of any policy or standards that exist in their counties.

VI. Record-Keeping

1. Statutory Requirement

None, other than the requirements to file accountings and status reports (see Section 6620).

2. State Policy

None, other than those records required by statute.

3. Social Work Practice Guidelines

It is recommended that a complete record be kept on all matters regarding the agency's guardianships. A system of controls and record-keeping can serve to remind the guardian of when things need to be done, to provide evidence of actions that have been taken and to provide a history of what has happened with the ward during the guardianship. In determining what needs to be documented, reference should be made to Section 6620, Authority and Responsibilities of the Guardian and Section 6630, Liability of the Guardian. This section contains Social Work Practice Guidelines for a guardianship record-keeping system, including central controls on all guardianships, individual case records and suggested content.

A. Central Registry of Guardianships Held by the Agency

1. The agency should maintain a central registry of all guardianships, including for each:

   a. The name of the ward,

   b. The date of appointment as guardian,

   c. The type of guardianship,

   d. The amount of bond and bonding company (or DHHS blanket bond),

   e. The agency file number,

   f. The file reference number in the clerk of court's office.

2. A copy of each guardianship order should be kept with the central registry.

3. The registry should be kept in the office of the director or assistant director who is appointed guardian to provide easily accessible reference information for the guardian.

4. The registry should be kept current and purged annually of any terminated guardianships.

5. A listing of guardianships that have been terminated should be maintained with the registry, with the date and reason for termination noted.

B. Master Index

A master index (card file, book, etc.) should be maintained on all guardianships as a control on when required reports are due and to provide basic information about each ward. The index is a management tool for agency staff who are delegated responsibility for working with the agency's wards. It should be kept in the office of staff who have that responsibility. The index should contain the following information about each guardianship:

1. The name of the ward,

2. The name of the ward's next of kin,

3. The agency file number,

4. The type of guardianship (person, estate, general),

5. If different parties are guardian of the person and of the estate, the name, address and telephone number of the other guardian,

6. For guardianship of the person:

   a. The date the status report is due,

   b. The name of the designated agency,

   c. The names of any professionals involved in providing services to the ward (physician, attorney, etc.),

   d. The scope of the guardianship (if limited, the limits on the guardian's authority).

7. For guardianship of the estate:

   a. The date initial and annual accountings are due,

   b. The names of any professionals working with the ward's estate (attorney, accountant, etc.).

C. Individual Case Record

A separate guardianship record should be maintained as a part of the adult's service record. When the guardianship is general (of the person and the estate) there should be a separate folder for information about financial matters regarding the estate.

The following information should be kept in the case record:

1. A functional assessment/reassessment

2. The written current service plan,

3. All documents regarding the adjudication of incompetency and appointment of guardian(s), including as applicable:

   a. Petition for adjudication of incompetency and appointment of guardian and accompanying information,

   b. Notice of hearing on incompetency and appointment of attorney or guardian ad litem,

   c. Adjudication of incompetency and order appointing guardian,

   d. Multidisciplinary evaluation and related documents (i.e. correspondence, bills, etc.),

   e. Subpoenas,

   f. Affidavits.

4. A continuing narrative that describes the ward's situation and changes in it; actions taken by the guardian, the reason for such actions and the results; and any plans for future steps to be taken to meet the ward's

needs. The narrative should be kept current and should be specific in terms of the ward's recognized needs and problems, the guardian's response to those concerns and the rationale for decisions made and actions taken. (See Section 6620 for information about authority and responsibilities of the guardian),

5. Correspondence,

6. All documents and statements from individuals and agencies providing services to the ward,

7. Copies of status reports with medical and dental examination reports attached,

8. Financial records (for guardianship of the estate and general guardianship), including:

    a. Copies of reports (accounting) to the clerk of court,

    b. All bills, receipts, and other documents of transactions,

    c. Any other documents and statements regarding the ward's estate.

9. Orders, Motions in the Cause, and judgments from the court (i.e. orders authorizing sale of property, consents for medical treatment to be provided, etc.)

VII. Private Organizations Established to Serve as Guardians

Under G.S. Chapter 35A, a domestic corporation may be appointed guardian if there is no individual available. This section contains applicable statutory requirements and information and Social Work Practice Guidelines on corporate guardians.

A. Statutory Requirement

"The clerk may appoint as guardian an adult individual, a corporation, or a disinterested public agent. The applicant may submit to the clerk the name or names of potential guardians, and the clerk may consider the recommendations of the next of kin or other persons." [G.S. 35A-1213(a)]

"A corporation may be appointed as guardian only if it is authorized by its charter to serve as a guardian or in similar fiduciary capacities." [G.S. 35A-1213(c)]

"The clerk shall consider appointing a guardian according to the following order of priority: an individual; a corporation; or a disinterested public agent." [G.S. 35A-1214]

B. State Policy

None

C. Social Work Practice Guidelines

1. In some communities, a private non-profit corporation may be established to serve as guardian for incompetent adults with certain disabilities. Such organizations serve as guardian of the person and the estate. In addition to paid staff, the organizations may use trained volunteers to stay in close communication with wards and to assist staff in seeing that the needs of wards are met on an ongoing basis.

   Private non-profit corporations are funded by grants, donations and fees from managing the estates of incompetent persons. To the extent that some wards have sizable estates, fees may help to support the cost of guardianship activities for indigent wards.

   Examples of corporations providing this service in this state are: The LIFEguardianship Program, which is based in Raleigh with branches in other areas of the state; Life Plan Trust Program which is based in Raleigh; and the Corporation of Guardianship, based in Greensboro.

2. A private corporation which provides guardianship services can be a valuable resource for the agency. Depending on the corporation's target population, the corporation may be able to assume all or many of the guardianships which would otherwise come to the agency.

   If there is a corporation in the community which provides guardianship services, an agreement between the corporation and the agency is recommended to provide a clear statement of how the two parties will work together on referrals and coordination of services for incompetent adults who are wards of the corporation.

VIII. Legal Alternatives and Supplements

A. Introduction

G.S. 35A stipulates that limiting the rights of a person by appointing a guardian should not be undertaken unless it is clear that the guardianship will give the person more capacity for exercising his rights.

Often less restrictive forms of intervention are available which may be more appropriate and adequate to meet the needs of the person. In some instances the needs of the person may be met by family, friends, a representative payee, an attorney-in-fact or health care agent acting under a durable power of attorney without the necessity of a guardian.

This section describes a range of proceedings including the process for obtaining civil commitments and representative payee. It also addresses several methods available for assisting persons who need help with their affairs. These include powers of attorney and advance directives such as living wills and substitute payeeship. Each has a specific purpose and is appropriate only under certain conditions. These proceedings may be less restrictive alternatives to guardianship while enabling the person to exercise his rights.

The appendices to this section include pertinent statutes as well as samples of forms to be used as needed.

B. Civil Commitments

1. Statutory Requirements for Voluntary Admissions and Discharges

The North Carolina Mental Health, Developmental Disabilities, and Substance Abuse laws, G.S. 122C-211; 212; 231; 232; and 241, address the criteria for voluntary admissions to and discharges from facilities for persons with mental illness and substance abuse problems, and to facilities for individuals with developmental disabilities for both competent and incompetent adults.

a. Facilities for the Mentally Ill and Substance Abusers

(1) Competent adults may seek their own admissions. A facility may elect not to admit an adult if it determines that the adult does not need, or cannot benefit from, available services. The adult must be discharged within 72 hours of his/her own written request [G.S. 122C-211(a)-(e), and 122C-212(a)-(c)].

(2) Incompetent adults must be diagnosed as having a mental illness or a substance abuse problem and be in need of treatment as a requirement for admission. The legally responsible person (i.e., guardian appointed under G.S. 35A) acts on the incompetent person's behalf in applying for

admission, consenting to treatment, and receiving legal notices. Incompetent adults are entitled to a district court hearing within 10 days of admission to the facility [G.S. 122C-231, 232(a)].

b. Facilities for Individuals with Developmental Disabilities

(1) Competent adults may be admitted on their own application [G.S. 122C-241(a)(3)].

(2) Incompetent adults are admitted on the guardian's application [G.S. 122C-241(a)(2)].

2. Statutory Requirements for Involuntary Commitments

G.S 122C-261-277 and 281-294 address the criteria for commitments and the procedures which must be followed for both inpatient and outpatient commitment of persons with mental illness, and persons with substance abuse problems.

a. Inpatient Commitment to Facilities for the Mentally Ill [G.S. 122C-261-277]

(1) Criteria

(a) An individual may be committed involuntarily to a mental health facility if he is:

i) mentally ill and either dangerous to self or dangerous to others, or in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness.

(2) Procedures

(a) Anyone may petition before a clerk or assistant or deputy clerk of superior court for issuance of an order to have the individual examined by a physician or eligible psychologist. An affidavit must be filed which includes facts which justify the petition for a custody order [G.S. 122C-261(a)].

(b) If the clerk or magistrate finds reasonable grounds to believe the facts alleged in the affidavit are true he issues a custody order to a local law enforcement officer, who transports the client to a physician or psychologist for examination/evaluation. If the examiner determines that the client meets commitment criteria, the law enforcement officer transports the client to an inpatient

facility, where a second examination is conducted within 24 hours [G.S. 122C-261(b), 122C-263(a)].

(c) A hearing is held in district court within 10 days of the day the client is taken into custody. If the court finds by clear, cogent and convincing evidence that the client meets the inpatient commitment criteria, it may order inpatient commitment for up to 90 days. At the end of the initial inpatient commitment period a rehearing can be held, and a second commitment order issued for an additional period of no more than 180 days. Rehearings can be held at the end of this second commitment period and annually thereafter [G.S. 122C-268, 271, 276].

b. Outpatient Commitment for the Mentally Ill [G.S. 122C-265]

(1) Criteria

(a) An individual may be involuntarily committed for outpatient treatment if he is:

1) mentally ill;

2) capable of surviving safely in the community with available supervision from family, friends or others;

3) in need of treatment to prevent further disability or deterioration which would predictably result in dangerousness; and

4) limited in his ability to seek voluntarily or comply with recommended treatment because of his current mental status or the nature of his illness [G.S. 122C-263(d)].

(2) Procedures

(a) The procedures are very similar to those for involuntary inpatient commitment. A petition is filed; a custody order issued; an examination conducted; and a district court hearing held.

(b) The court may order outpatient commitment for up to 90 days on initial hearing and for up to an additional 180 days on rehearing [G.S. 122C-267, 273, 275].

c. Involuntary Commitment of Substance Abusers to Facilities for Substance Abusers [G.S. 122C-281(a)]

(1) Criteria

(a) An individual may be involuntarily committed to a facility for substance abusers if he is a substance abuser and dangerous to himself or others [G.S. 122C-281(a)].

(2) Procedures

(a) The procedures are very similar to those for involuntary inpatient commitment for those with mental illness. A petition is filed; a custody order issued; an examination conducted; and a district court hearing held within 10 days of the day the client is taken into custody.

(b) The court may order commitment to and treatment by the area authority or physician for up to 180 days on the initial hearing, and up to 365 additional days on a rehearing if the client continues to meet the statutory criteria. The area authority or physician to whom the client is committed determines whether the client is treated on an inpatient or outpatient basis.

3. State Policy

None related to Guardianship.

4. Social Work Practice Guidelines

a. When an individual is a resident of a county in a catchment area of an area mental health authority which has policies for a single portal of entry and needs commitment, then the area mental health authority is the designated lead agency and is responsible for facilitating and coordinating services for patients from its area.

Regardless of whether the individual is a resident of a single portal of entry area, family members and other interested parties in the community who have direct knowledge of a situation are able to initiate judicial commitment proceedings. The physician at the area mental health agency will make any decisions regarding the need for treatment in a single portal of entry area or by a physician or eligible psychologist if not in a single portal of entry area.

If there are no other persons available, then DSS may need to conduct an assessment of the situation and take whatever action is necessary, i.e., pursuing involuntary commitment.

b. If the client later returns to the community, DSS may need to work with the hospital and the area mental health agency in arranging for other services such as representative payeeship, guardianship or other services. This would be the same types of services that would be provided to other hospital patients upon discharge.

c. Appendix J, contains sample Administrative Office of the Courts (AOC) forms pertaining to involuntary commitment proceedings. The magistrate should have these forms available.

(1) Affidavit and Petition for Involuntary Commitment

(2) Findings and Custody Order Involuntary Commitment

(3) Notice of Hearing/Rehearing for Involuntary Commitment

(4) Involuntary Commitment Order Mentally Ill

C. Powers of Attorney

1. Statutory Requirements

Requirements regarding the definitions and the duties and responsibilities of a power of attorney are contained in G.S. 32A. It includes the General Power of Attorney, Durable Power of Attorney and Health Care Power of Attorney. The provision for Health Care Power of Attorney will be discussed later in this section as one of the mechanisms for advance directives.

Chapter 32A, Articles 1 and 2 define the different powers of attorney documents, identify the scope of the authority afforded by each type, address the reporting and record-keeping requirements for each, and explain the creation of and circumstances under which a power of attorney can be revoked.

2. Statutory Requirements for a General Power of Attorney

a. Definition

A general power of attorney is a document by which a competent adult (referred to as the principal) authorizes another designated person (referred to as the attorney-in-fact) to act for him/her and manage his/her affairs.
A general power of attorney ends if the adult becomes incompetent or dies.

b. Creation of a power of attorney

The use of the Statutory Short Form of General Power of Attorney is lawful and can be found in G.S. 32A-1, Article 1.

c. Authority of a General Power of Attorney

(1) The authority granted to the attorney-in-fact may be very broad or very limited, depending on the wishes of the adult.

(2) The attorney-in-fact may be authorized to assume responsibility for any or all of the following:

(a) real property transactions;

(b) personal property transactions;

(c) bond, share and commodity transactions;

(d) banking transactions;

(e) safe deposits;

(f) business operating transactions;

(g) insurance transactions;

(h) estate transactions;

(i) personal relationships and affairs; and/or

(j) social security, unemployment and benefits from military service [G.S. 32A-1, Article 1].

3. Statutory Requirements for a Durable Power of Attorney

a. Definition

(1) A durable power of attorney is a document whereby a competent adult authorizes and designates in writing another person(s) to act for him and manage his affairs.

The document is "durable" if it states that the authorization is effective after the adult becomes mentally incompetent or incapacitated. [G.S. 32A-8, Article 2]

(2) There are two ways to indicate that a power of attorney is durable:

(a) If the power of attorney is to take effect only after the adult becomes mentally incompetent or incapacitated; then a clause must be written to indicate this requirement.

(b) If a general power of attorney is to be a durable power of attorney and is to continue in effect after the incapacity or mental incompetence of the principle, a clause stating that the power of attorney will not be affected due to incapacity or incompetency must be added.

(3) All powers and authority outlined in the document are granted the attorney-in-fact if the durable power of attorney document has been registered in the office of the register of deeds in the appropriate county. [G.S. 32A-9]

(4) For the attorney-in-fact to be able to act on behalf of the adult after the adult becomes mentally incompetent or incapacitated, a durable power of attorney document must specifically state this intent. [G.S. 32A-9]

b. Reporting and Record-Keeping Requirements

(1) The attorney-in-fact is required to file a copy of the power of attorney document with the clerk of superior court within 30 days after the power of attorney is registered, subsequent to the adult's incapacity or incompetency. Also it is required that the attorney-in-fact render inventories and accountings to the clerk. [G.S. 32A-11(a)]

The attorney-in-fact is not required to file a copy of the power of attorney document with the clerk or make accountings to the clerk, subsequent to the adults incapacity or incompetency, if the principle waives this requirement. [G.S. 32A-11(b)]

(2) When an adult, who has executed a durable power of attorney, becomes incompetent, the attorney-in-fact must keep complete, accurate records of all property and transactions in which he acted on behalf of the adult. Inventories and accounts include inventories of the adult's property for which the attorney-in-fact is responsible and annual and final accounts of receipt and disposition of property and other transactions in behalf of the adult. [G.S. 32A-11(b)]

c. Relationship of Attorney-in-fact to Guardian

(1) When a guardian is appointed for an incompetent adult who has a durable power of attorney, the attorney-in-fact is accountable to the guardian and to the adult. [G.S. 32A-10(a)]

(2) The guardian has the same authority to revoke or amend the power of attorney that the adult would have if he were not incompetent. [G.S. 32A-10(a)]

d. Revocation

(1) A durable power of attorney may be revoked by:

(a) The death of the adult; or

(b) Registration of an instrument of revocation in the office of the register of deeds where the power of attorney has been registered. The instrument of revocation must be executed and acknowledged by the adult while he is not incapacitated or mentally incompetent; or by any person or corporation who is given such power and revocation by the principle. [G.S. 32A-13]

4. State Policy

None related to Guardianship.

5. Social Work Practice Guidelines

a. Most adults find thinking about and making decisions regarding their personal affairs in the event that they should become disabled or incompetent an unpleasant task. Therefore, if this does occur, there are no provisions in place for another person to be able to handle these affairs. Procedures such as involuntary commitment or guardianship are intrusive legal alternatives which must be initiated by another person on behalf of an incapacitated or incompetent adult. By contrast, a power of attorney is designated by a competent adult and can be used to instruct an attorney-in-fact to make decisions for the adult when he is no longer able to make decisions for himself.

If these instructions are not made prior to the adult becoming incompetent or unable to communicate choices, then the courts may make the decisions about who will handle the adult's affairs. This court appointed person may or may not have known the adult or the adult's wishes concerning the handling of his affairs.

A general power of attorney allows a competent adult to direct a person to act on his behalf. By choosing this attorney-in-fact prior to becoming incompetent, it will help to ensure that the individual's own wishes are carried out.

b. The social worker may inform a client about the advantages of a power of attorney. If it has been determined that the adult's mental capabilities are not impaired then he could be referred to an attorney.

(1) The attorney may discuss executing a power of attorney as an advance directive to be in effect when the adult loses capacity or becomes unable to make decisions; or

(2) to extend the capabilities of a physically disabled person to manage his own affairs through a power of attorney.

c. G.S. 32A-1 contains a Statutory Short Form of General Power of Attorney which can be used to create a power of attorney. A different form may be used if desired. It is advisable to seek legal counsel in order to ensure that the document is properly prepared.

d. G.S. 32A does not define incapacity or mental incompetence, nor is there any statutory requirement regarding who determines that an adult is incapacitated or incompetent.

In the absence of statutory guidance, the attorney-in-fact may receive documentation of an adult's incapacity or incompetence by obtaining a statement from a physician or psychologist who has evaluated the adult's condition. This will help in deciding when the authority of the attorney-in-fact, outlined in a durable power of attorney document, begins.

It is also important to check with the register of deed's office to see if the document has been registered, if the adult has become incapacitated or incompetent.

If the disabled adult is thought to be incompetent or incapacitated, the worker might consider petitioning for guardianship since a guardian's authority supersedes the authority of an attorney-in-fact and the guardian can choose to have the power of attorney revoked.

e. It is often very difficult to prove that an attorney-in-fact acted outside the realm of the wishes of the principle. Courts find it difficult to prosecute or revoke a designated power of attorney without due cause when the power of attorney document gives the attorney-in-fact unlimited authorization.

The lack of specificity in a power of attorney document is often problematic. The limits on the authority of the attorney-in-fact over the person or the person's property are not always clear. It is important to read the power of attorney document thoroughly to determine the scope of the attorney-in-fact's authority, if this authority has been questioned.

D. Advance Directives

North Carolina has two methods for competent adults to communicate decisions about their medical care in the event they should become incompetent and no longer able to make these decisions for themselves or communicate their wishes. A "living will" is a written declaration of the individual's desire for a natural death. A health care power of attorney is a written document appointing another person to accept or refuse medical treatment in the event of incapacity. Not all states have laws providing for living wills or health care powers of attorney. Only documents prepared under North Carolina law are valid in this state.

1. Statutory Requirements

a. Declaration of a Desire for a Natural Death

North Carolina laws reflect the recognition that an individual's rights include the right to a peaceful and natural death and that an individual has the right to control those decisions including the decision to have extraordinary means withheld or withdrawn in instances of terminal conditions. Statutory provisions for the right to a natural death are found in G.S. 90, Article 23.

(1) The living will or a Declaration of a Desire For a Natural Death allows the individual to make choices about withholding or discontinuing "extraordinary means" such as artificial nutrition or hydration in the event of terminal illness, incurable illness or a diagnosis of being in a persistent vegetative state. [G.S. 90-320]

(2) The instructions in the living will can not be used until the attending physician determines, and a second physician concurs in writing, that the individual's condition is terminal and incurable or diagnosed as a persistent vegetative state. The individual can revoke the living will at any time, but the revocation does not become effective until the attending physician is notified. [G.S. 90-321]

b. Health Care Power of Attorney

(1) Any person who is 18 years old or older and has an understanding of and capacity to make and communicate health care decisions may designate a health care power of attorney. [G.S. 32A-17]

(2) Authority of a Health Care Power of Attorney

The health care power of attorney allows a competent adult (the principal) to designate an individual (the health care agent) to make medical decisions for him if he cannot make them himself. The health care agent's authority can be as broad or limited as the principal chooses. The authority which can be given to the agent includes all powers the individual himself would have, including the power to consent to a doctor's giving, withholding or stopping any medical treatment, service or diagnostic procedure, including life-sustaining procedures. [G.S. 32A-19]

(3) Effectiveness and Duration

(a) The health care power of attorney becomes effective when the doctor designated in the document determines that the principal lacks sufficient understanding or capacity to make or communicate health care decisions. [G.S. 32A-20]

(b) The principal may revoke the health care power of attorney at any time, as long as he is able to make and communicate medical care decisions. The revocation becomes effective once it is communicated to every agent named and the attending physician.

(c) The principal can recommend a future guardian of the person in the document. The clerk of court shall make this appointment except if good cause is shown not to do so. The health care power of attorney is no longer effective when a guardian is appointed by the clerk of court for the principal.

If the principal has designated both a durable power of attorney and a health care agent with health care powers, the health care agent's power is superior regarding health care matters. [G.S. 32A-22]

(d) The health care power of attorney may be incorporated into a Declaration of A Desire For A Natural Death (A Living Will). [G.S. 32A-25]

(4) Statutory form

The use of the form outlined in G.S. 32A-25 in the creation of a health care power of attorney is lawful.

This document gives the person broad powers to make health care decisions for the individual, including the power to consent to the doctor not giving treatment or stopping treatment necessary to keep the individual alive.

2. State Policy for Advanced Directives

None related to Guardianship.

3. Social Work Practice Guidelines

a. An advance directive, made while a person is still competent, has the force of a decision made by a competent adult, and thus must be honored in the same way. Any advance communication made by a competent adult regarding that person's affairs is better than nothing because it presents the "best evidence" of a person's wishes.

b. Like the Power of Attorney, the advance directives are also preventative. They enable individuals to make choices to identify someone they want to carry out their decisions when they become incapable of doing so.

c. The health care agent is limited to health care decisions only. This person cannot conduct business transactions or personal affairs of any other type.

d. A health care agent's authority regarding health care decisions takes precedence over a durable power of attorney's authority. A guardian has authority over all types of powers of attorney.

e. Appendix K, contains a statutory Advance Directive for a Natural Death ("Living Will") document.

Appendix L contains a statutory Health Care Power of Attorney document.

E. Substitute Payee

There are different types of substitute payee. These include protective payee, personal representatives and representative payee.

1. Statutory Requirements

a. G. S. 108A-38 addresses the procedures for protective and vendor payments.

b. G. S. 108A-37 addresses the procedures for obtaining personal representatives for mismanaged public assistance.

2. State Policy for Protective Payee

Requirements and procedures for appointment of a protective payee may be found in Payment Rules for Payees, Work First Manual, Section 205. These policies are based on federal regulations found in 45 CFR Ch. II, Part 234.60.

a. A protective payee is appointed when it is determined that the recipient is not complying with eligibility requirements or mismanaging their Work First Family Assistance payment in a manner that threatens the well-being of the children.

b. A protective payee must be an individual who is interested in the welfare of the assistance unit. Suitable persons may include professional staff of private agencies, interested private citizens, members of the clergy or social workers in a county department carrying service responsibility.

c. Neither the director of social services nor an eligibility staff member of the county department of social services may serve as protective payee.

d. Appointing a protective payee is an eligibility function even though a service worker must be involved.

e. Protective payments should continue until the recipient complies with eligibility requirements. In cases involving mismanagement of the Work First Family Assistance payment it should be determined whether protective payments are likely to continue beyond two years. If so, then the appointment of a guardian or personal representative should be considered.

3. State Policy for a Personal Representative

Procedures for the appointment of a personal representative may be found in Payment Rules for Payees, Work First Manual, Section 205.

a. Court action must be taken when a recipient of public assistance is unwilling or unable to manage his assistance payment to the extent that his failure to manage his affairs results in deprivation of the children or hazard to himself or others.

b. The request that a personal representative be appointed is made to the district court or clerk of Superior Court by the county director of social services.

c. A personal representative is appointed by the court to be responsible for receiving a public assistance recipient's check and using it to meet the recipient's needs.

d. The court may not order the following persons to serve as a personal representative:

(1) a member of the Board of County Commissioners; or

(2) a member of the County Board of Social Services; or

(3) a staff member of the county department of social services; or

(4) a person who will benefit directly from the payment such as the recipient's landlord.

e. A personal representative serves without compensation until the director of social services or the recipient shows to the court that the personal representative is no longer required or is unsuitable.

4. Federal Statutory Requirements for Representative Payee

a. Types of government benefits for which representative payee may be designated are:

(1) Federal Old-Age, Survivors and Disability Insurance (Social Security);

(2) Supplemental Security Income (SSI);

(3) Black Lung Benefits;

(4) Railroad Retirements; and

(5) Veterans Administration Benefits.

b. The federal administrative agency will designate a payee when it finds that the beneficiary's interests will be better served by such an arrangement and the beneficiary is unable to manage, or direct the management of his benefits.

c. A representative payee is chosen from among interested persons, agencies or institutions capable of attending to the beneficiary's needs.

d. The payee is responsible for receiving and spending the funds for the beneficiary's basic personal and medical needs.

e. The payee must make accountings for the benefits to the administrative agency and report to it any changes in the beneficiary's status that affect his/her entitlement to benefits.

4. State Policies

None related to guardianship.

5. Social Work Practice Guidelines

a. The appointment of a representative payee may be appropriate for an adult who lacks the ability to make responsible decisions about his finances (i.e. SSI, VA benefits), but is capable of making responsible decisions about his person.

b. The appointment of a representative payee may be appropriate for an adult who is unable to make decisions about his person or his finances. The least restrictive alternative may be the appointment of a guardian of the person with a payee managing the person's finances.

c. A representative payee may not be appropriate for an incompetent individual who has significant financial assets (i.e. real estate, investments, bonds) including Social Security and Veteran's benefits. A guardian of the estate may be more appropriate.

IX. APPENDICES

A. G.S. Chapter 35A: Incompetency and Guardianship, Subchapters I, II, and III

http://www.ncleg.net/gascripts/Statutes/StatutesSearch.asp?searchScope=35A&searchCriteria=enter+search+criteria&returnType=Section

B. Forms for Petitions and Orders

Forms and Orders Online:
http://www.nccourts.org/Forms/FormSearch.asp

C. DHHS-7016, Notification of Appointment of Disinterested Public Agent Guardian

D. Sample Status Report Form

E. Sample Certificate of Receipt of Status Report

F. Financial Report Form: AOC-E-506, Account

http://www.nccourts.org/Forms/Documents/418.pdf

G. Guidelines for Multidisciplinary Evaluations

H. G.S. 122C-3(14), Definition of "Facility" from Mental Health, Developmental Disabilities, and Substance Abuse Act of 1985

http://www.ncga.state.nc.us/EnactedLegislation/Statutes/pdf/BySection/Chapter_122C/GS_122C-3.pdf

I. Mental Health, Developmental Disabilities, and Substance Abuse Act of 1985, Excerpts from Article 5, Procedures for Admission and Discharge of Clients

http://www.ncga.state.nc.us/EnactedLegislation/Statutes/pdf/BySection/Chapter_122C/GS_122C-211.pdf

J. AOC Forms for Involuntary Commitment

Affidavit and Petition for Involuntary Commitment
http://www.nccourts.org/Forms/Documents/661.pdf

Notice of Hearing/Rehearing for Involuntary Commitment
http://www.nccourts.org/Forms/Documents/445.pdf

http://www.nccourts.org/Forms/Documents/446.pdf

Involuntary Commitment Order Mentally Ill
http://www.nccourts.org/Forms/Documents/674.pdf

K. G.S. 90-Article 23, Right to Natural Death; Brain Death, and Statutory Form.

http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_90/Article_23.pdf

L. G.S. 32A-Article 3, Health Care Powers of Attorney and Statutory Form.

http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_32A/Article_3.pdf

M. Sample Guidelines for Decision Making

N. Attending Physician's Statement Recommending Treatment for Ward
Non-Attending Physician's Statement Recommending Treatment for Ward

O. Physician's Affidavit and Non-Attending Physician's Affidavit

P. Sample Format to Facilitate Inter-County Cooperation Around Guardianship Services Provision

Q. Sample Format, Cooperative Agreement

Appendix B

Forms for Petitions and Orders

AOC-SP-200 (Rev. 4/08)	Petition for Adjudication of Incompetence and Application for Appointment of Guardian or Limited Guardian and Interim Guardian
AOC-SP-201 (Rev. 6/04)	Notice of Hearing on Incompetence/Motion in the Cause and Order Appointing Guardian Ad Litem
AOC-SP-202 (Rev. 7/04)	Order on Petition for Adjudication of Incompetence
AOC-SP-208 (New 6/04)	Guardianship Capacity Questionnaire
AOC-SP-550 (Rev. 7/06)	Special Proceedings Action Cover Sheet
AOC-SP-900M (Rev. 4/97)	Order on Motion for Appointment of Interim Guardian
AOC-SP-901M (Rev. 7/06)	Request and Order for Multidisciplinary Evaluation
AOC-E-206 (Rev. 4/08)	Application for Letters of Guardianship of the Estate/Limited Guardianship of the Estate/Guardianship of the Person/Limited Guardianship of the Person/General Guardianship/Limited General Guardianship for an Incompetent Person
AOC-E-211 (New 2/96)	Notice of Hearing Appointment of Guardian/Other
AOC-E-400 (Rev. 3/07)	Oath
AOC-E-406 (Rev. 7/04)	Order on Application for Appointment of Guardian
AOC-E-407 (Rev. 7/06)	Letters of Appointment Guardian of the Estate
AOC-E-408 (Rev. 7/06)	Letters of Appointment Guardian of the Person
AOC-E-413 (Rev. 7/06)	Letters of Appointment General Guardian
AOC-E-415 (New 7/04)	Motion in the Cause to Modify Guardianship
AOC-E-416 (New 7/04)	Order on Motion to Modify Guardianship
AOC-E-417 Rev. 7/06)	Letters of Appointment Limited Guardian of the Estate
AOC-E-418 (Rev. 4/08)	Letters of Appointment Limited Guardian of the Person
AOC-E-419 (Rev. 7/06)	Letters of Appointment Limited General Guardian
AOC-E-506 (Rev. 7/06)	Account Annual/Final
AOC-E-510 (Rev 7/06)	Inventory for Guardianship of Estate
AOC-E-650 (Rev. 7/06)	Estates Action Cover Sheet

Appendix C

NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES
Notification of Appointment of Disinterested Public Agent Guardian
REQUEST FOR BOND COVERAGE/REMOVAL FROM BOND

Complete in Duplicate, Retaining One Copy for Agency Files. Please Type or Print
(See Instructions on Back for Completing Form)

A. Request for Bond Coverage (please check appropriate box) **Initial ___ Change ___**

1. Name of Public Agent Guardian **2. Title:** **3. Date of Appointment**

4. Full Name of Ward: **5. Date of Birth** **6. Race___7. Gender___**

8. Living Arrangement: (Please check appropriate box)

____ Private Home ____ Group Home ____ Adult Care Home
____ Nursing Home ____ State Psychiatric Hospital
____ State MR Facility _____ Jail/Prison ____ Other ____ Unknown

9. Primary Incapacity: (Please choose two for dual diagnoses)

___ Mental Illness
___ Developmental Disability
___ Chronic Substance Use
___ Physical Disease/Injury
___ Dementia
___ Other
___ Unknown

10. County and State Where Ward Lives
_____

11. County Where Guardian's Agency is Located
_____

12. Type of Guardianship: (Please check appropriate box)

a. Interim Guardianship _____ of Estate _____ General

b. Limited Guardianship _____ of Person _____ of Estate _____ General

c. Full Guardianship _____ of Person _____ of Estate _____ General

13. Amount of Estate
(N/A for Guardian of the Person)

14. Amount of Bond:

B. Request for Removal From Blanket Bond Coverage

Please remove the above named ward from the DHHS Blanket Bond for the following reason(s):

1. Ward has died (date: _____)

2. Ward's competency has been restored (date: _____)

3. Guardianship has been transferred (date _____)

4. Other _____

C. Authorization From Guardian

1. Signature of Guardian **2. Date** **3. Agency Name and County**

Instructions For Completing DHHS 7016

1. **Complete form DHHS 7016, Section A to request initial DHHS Blanket Bond coverage for wards when appointed guardian.**

2. **Use the following numbers to complete Section A, # 6:**

   - **Caucasian – 1**
   - **African American – 2**
   - **Latino/Hispanic– 3**
   - **Native American/Eskimo – 4**
   - **Asian/Pacific Islander – 5**
   - **Mixed Race - 6**
   - **Unknown - 7**

3. **Use the following numbers to complete Section A, # 7:**

   - **Female – 1**
   - **Male – 2**
   - **Unknown - 3**

4. **Complete form DHHS 7016, Section A to request changes to the initial coverage for wards when there is a:**

   - **Change in the amount of the ward's estate;**
   - **Change in the type of guardianship; and**
   - **Change in the name of the disinterested public agent guardian.**

5. **Complete form DHHS 7016, Section A (#'s 1 through 7) and Section B to remove a ward's name from the DHHS Blanket Bond.**

6. **Section C should be completed on all requests.**

Mail Completed Form To:

NC Division of Aging and Adult Services
Adult Services Section
693 Palmer Drive
2101 Mail Service Center
Raleigh, NC 27699-2101

Appendix D

STATUS REPORT

Name of Ward:_____ Address:_____ _____ _____	Type of Guardianship: [ ] Guardian of Person [ ] General Guardian
Scope of Guardianship:_____ _____ _____ _____	[ ] Initial Status Report (Within 6 months after appointment) [ ] Annual Status Report

The undersigned guardian, being duly sworn, says that insofar as he is informed and can determine, the following is a complete and accurate status report and is submitted in compliance with G.S. 35A-1242. This status report covers the period of time extending from the _____ day of _____, 20 ____ to the _____ day of _____, 20 ____.

I. REPORT OF MEDICAL AND DENTAL EXAMINATIONS

A. Medical Examination

1. Date of Examination:
2. Name and Address of Examining Physician(s):

3. Place of Examination
4. Report of Examination (Guardian may attach copy of examination reports):

B. Dental Examination

1. Date of Examination:
2. Name and Address of Examining Dentist(s):

3. Place of Examination
4. Report of Examination (Guardian may attach copy of examination reports):

I. REPORT OF GUARDIAN ON PERFORMANCE OF DUTIES AS THEY ARE SET FORTH IN ORDER APPOINTING GUARDIAN

II. REPORT ON THE WARD'S CONDITION, NEEDS AND DEVELOPMENT

III. OTHER REPORTS (Attach copies to this report)

Guardian		
Street Address		
City	**State**	**Zip Code**
Telephone Number		

I, _____ (Guardian), first being duly sworn, affirm that the foregoing status report is complete and accurate to the extent that I can determine and am informed as to the status of _____ (Ward).

_____
(Guardian)

Sworn to and subscribed before Me this _____ day of _____, 20____.

_____
Notary Public
My commission expires_____

Submitted to:_____
Designated Agency
Date:_____

FILE # _____
FILM # _____

STATE OF NORTH CAROLINA
_____COUNTY

In the Matter of the Estate of)
)
_____,)

Incompetent)

Appendix E

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
BEFORE THE CLERK

CERTIFICATE OF
RECEIPT OF STATUS REPORT

The _____ County Department of Social Services, having been designated by the Clerk of Superior Court of _____ County as the "designated agency" to receive Status Reports required by North Carolina General Statute Section 35A-1243 to be filed by the Guardian of a ward, does hereby certify that it has received from _____, the Guardian of the above-named incompetent ward, a Status Report covering the period of time extending from the _____day of _____, 20____ to the _____day of _____, 20_____.

This the_____day of _____, 20_____.

_____ COUNTY DEPARTMENT OF SOCIAL SERVICES

By:_____
Title:

Sworn to and subscribed before me this

_____day of _____, 20_____.

_____

My commission expires_____

Appendix G

GUIDELINES FOR MULTIDISCIPLINARY EVALUATIONS

In order to determine issues of competency and guardianship, a multidisciplinary evaluation may be requested by a clerk of court, respondent, counsel or guardian. Minimally, a multidisciplinary evaluation team would contain a physician, psychologist, and social worker. However, professionals from other disciplines may participate in the evaluation at the request of the multidisciplinary evaluation team, clerk, or respondent. The evaluation would address the nature of the disability, the extent of incompetency, and the suggested limitations of guardianship.

The attached guidelines are suggestions for a two-part multidisciplinary evaluation. The first part would consist of separate evaluations by the physician, psychologist and social worker. These evaluations would reflect the expertise of the discipline. Hence, the physician would determine the client's physical and neurological status. Intellectual functioning, adaptive behavior and emotional status would be assessed by the psychologist. The social worker would focus on environmental conditions, social relations, and community resources. The second part of the evaluation procedure would consist of a conference, preferably in person, but if necessary by telephone, among the three evaluators. Based upon the findings of the discipline evaluations, the conference participants as a group will identify areas of competence and incompetence, as well as develop recommendations for general or limited guardianship. A summary of the conference recommendations will be written by one of the three participants. This summary as well as the reports of the three discipline evaluations will be forwarded to the clerk, petitioner, and respondent.

The guidelines for the discipline evaluations and for the multidiscipline conference are attached. The guidelines are designed as suggestions for focus and organization and not as prescriptions or requirements for a rigid format. It is recognized that these guidelines may not be complete or appropriate for each particular case. Hence, the evaluators' professional judgment would precede the guidelines in such situations.

MEDICAL EVALUATION GUIDELINES

Name Date of Birth Date of Evaluation

I. History

Character of deficit (mental illness, mental retardation, cerebral palsy, epilepsy, autism, inebriety, senility, disease injury):
Etiology (if known or presumed)
Contributory medical family history:
Present medical status (degree of disability, other relevant data):
Chronic medical problems other than above:
Previous hospitalizations for significant medical problems and/or operations (include hospital and dates):
Previous hospitalizations for treatment of mental illness (include hospital and dates):
Hearing (by history): Vision (by history):
Medications taken regularly or frequently (give dosage):
Current physician(s) or involved health agencies, with frequency of contact:
Evidence of alcoholism or drug abuse:
Other relevant information:

II. Examination

General appearance (note unusual findings):

Height: Weight: Pulse: B. P.
Skin Hair:
Head (include circumference, if contributory):
Eyes: Funduscopy:
Ears (include gross hearing to voice and whisper):
Nose, mouth, and oropharynx:
Teeth: Neck (include thyroid):
Heart (and peripheral circulation when appropriate):
Chest and lungs:
Abdomen: Genitalia (also R/O Herniae):
Spine, hips, and extremities (include symmetry):
Rectal (if appropriate): Other:

Neurological:

Cranial nerves (extraocular movements, nystagmus, pupillary responses, smile, gritting teeth, gag, shoulder shrug):

Motor strength, tone and coordination (spasticity, athetoid movements, tremor, fine motor functioning, etc.; include finger-to-nose, hand squeeze, rapid thumb to consecutive finger approximation, gait):

Sensory (Romberg; touch, pin and vibration when indicated):

DTR's (symmetry and intensity): Plantar responses:

Gross vision (letter or symbol chart)

Without glasses:	R	L
With glasses, if worn:	R	L

Unusual behaviors:

Pertinent laboratory test results (CBC, urinalysis, possibly others):

III. Impression

Summary of abnormal findings and medical impression:

Assessment of mental competency (with reasons for this assessment):

Estimate of medical prognosis, when possible and appropriate (i.e., is the deficit one which is apt to result in a change in the level of competency with time?):

Examiner: Address:

PSYCHOLOGICAL EVALUATION GUIDELINES

I. Intellectual Assessment—This should be done with a standard evaluation instrument. The Wechsler Adult Intelligence Scale (WAIS) is the test of choice, especially for those mildly and moderately retarded citizens with good skills. The Wechsler Memory Scale can be used to test for short term memory. Other generally accepted intellectual instruments can be used such as the Slosson Intellectual Test-R, the Bender Motor Gestalt Test and Beck Depression Scale.

II. Behavioral Assessment—A standard evaluation instrument should also be used for this assessment. The Vinaland Adaptive Behavior Skills (Interview Edition) assesses adaptive and maladaptive behaviors. Domains include communication, socialization and daily living skills. Forms are available from the American Guidance Services, Inc., Circle Pines, Minnesota 55014-1796. The AAMD Adaptive Behavior Scale is another excellent instrument for assessing adaptive behavior. (Manual and Forms are available from AAMD, 5101 Connecticut Avenue, N. W., Washington, D.C. 20015.)

III. General Interview—In addition to the formal assessments, the psychologist should conduct a personal interview, lasting from 20-40 minutes. The following general areas should be assessed during the interview:

A. Ability to relate, to answer direct questions and to respond to the interviewer.
B. Activity level, distractibility.
C. General coordination, posture and balance.
D. Orientation to other persons, time and place.
E. Speech and language.

F. Thought processes organized or not, rigid or flexible, perseveration?
G. Affect and mood.
H. Self-concept.
I. Strengths and coping strategies.
J. Friends and other support systems.
K. Leisure interests and activities.

SOCIAL WORK EVALUATION GUIDELINES

The social work evaluation addresses the social and environmental aspects of the individual's life. The evaluation report would provide a description and assessment of living arrangements, interpersonal relationships, community resources, and potential guardians. A comprehensive evaluation will necessitate an observation of the individual in his usual environment, that is, place of employment and/or residence. In addition, it may be essential to interview, in person or by telephone, significant persons in the individual's social network such as parents, relative, friends, supervisors, potential guardians, and staff members of various agencies. Guidelines for the social work evaluations are suggested below. It is assumed that the guidelines will not be appropriate or complete for each particular situation. The social worker should exercise professional judgment and modify the guidelines depending upon the particular circumstances.

I. Environmental Aspects

A. Residence
1. Current Residence—(i.e., location; type; supervision; household members, length of residence; household responsibilities; appropriateness of physical facilities and supervision; adjustment to environment.)
2. Previous Residences—if less than 1 year in current residence (i.e., brief history; see item above.)

B. Employment
1. Current Employment—(i.e., location, employer, supervision; supervisor; job responsibilities; salary; work behavior; length of employment; appropriateness of job; facility and supervision.)
2. Previous Employment—(i.e., brief history, see item above.)

C. Training and Education
1. Current Training and Education—(i.e., program, location, supervisor or teacher; skills developed; behavior; achievements; length of program; appropriateness of training program.)
2. Previous Training and Education—(i.e., brief history; see item above.)

D. Transportation
1. Current Transportation—(i.e., primary means of transportation, frequency, limitations, needs, appropriateness of transportation means.)

2. Previous Transportation—(i.e., brief history; see item above.)

II. Financial Aspects

A. Current Finances—(i.e., sources and amount of income, expenses, debts, major assets; personal money management; supervised money management, bank and credit utilization, insurance utilization.)
B. Previous Finances—(i.e., brief history; see item above.)
C. Other—(i.e., pertinent information-related living arrangements and environmental situation.)

III. Social Aspects
A. Immediate Family—(i.e., parents, spouse, children—names; residence; frequency of contact: type of interaction; supervision; appropriateness of activities.)
B. Extended Family—(i.e., siblings; cousins; see item above.)
C. Friends—(see item II-A.)
D. Group Activities—(i.e., clubs, church groups, teams—type of activity; frequency; skills, participants; types of interaction; supervision; appropriateness of activities.)
E. Avocational Interests—(i.e., hobbies, personal interests; see item above.)
F. Other—(i.e., pertinent information concerning interpersonal relationships and social context.)

IV. Community Aspects
A. Health—(i.e., physicians, dentist, health care agencies—name of personnel and agencies; services provided; availability of services; frequency of contact; utilization of service; appropriateness of service and of utilization.)
B. Economic
C. Vocational/Education—(i.e., Vocational Rehabilitation, School System; see item III-A.)
D. Mental Health—(i.e., Mental Health Services; see item III-A.)
E. Legal—(i.e., attorney, courts, probation or parole officer; see item III-A.)
F. Other—(i.e., pertinent information related to community resources and interaction.)

V. Potential Guardian—(i.e., name; relation; frequency of contact; history of contact; interest; abilities; limitations.)

VI. Summary of Impression
A. Summary and Impression concerning environmental, social and community assessment (i.e., living arrangements, interpersonal relationships, community interaction; specific strengths and limitations; availability of environmental, social and community resources; ability and limitations concerning utilization of resources.)

B. Summary and Impression concerning potential guardian.

MULTIDISCIPLINARY EVALUATION CONFERENCE GUIDELINES

Following the discipline evaluations, the three evaluators will meet in conference to discuss the issues of disability, competency and guardianship. A report of the multidiscipline conference will be written by one of the participants and forwarded to the clerk, respondent and petitioner. This report will present the final impressions and recommendations of the multidisciplinary evaluation team concerning competency and guardianship. It is essential that the report contain references to specific evaluation findings and information which influenced the impressions and recommendations. Guidelines for the multidisciplinary evaluation conference and report are suggested below.

I. Competency—Describe the competency of the individual, including specific areas of competency (i.e., individual can decide and/or perform autonomously) and incompetency (i.e., individual cannot decide and/or perform autonomously.) For areas of incompetency, describe the extent to which the client can decide and/or perform and the amount of assistance needed. Description of areas of competency and incompetency should address the following categories: (1) self-care (2) residence (3) employment (4) financial management (5) medical and health care (6) mental health and social services (7) education and training (8) legal assistance.

II. Guardianship—Describe appropriate guardianship—either complete, person, estate or limited. If limited guardianship, describe specific power and limits of guardian in each specific category identified in item II. Describe specific duties of the guardian and specific issues to be reviewed in six months. Describe impressions of potential guardians.

SAMPLE GUIDELINES AND PROCEDURES FOR DECISION MAKING

The director/assistant director of _____
(Agency Name)
as guardian of the person retains all the powers and duties as outlined in North Carolina General Statute 35A-1240 to the extent that it is not inconsistent with the terms of any order of the clerk or any other court of competent jurisdiction.

The following outlines procedures that will be followed by the guardian and staff of the _____ to ensure that informed decisions are made
(agency)
on behalf of the wards the guardian is appointed to serve:

A current listing of wards will be maintained at the reception and intake areas to alert the guardian of any inquiries received by the agency about wards.

Immediately after the guardianship appointment the assigned worker will gather all of the following pertinent information from the ward/ward's family to facilitate decision making:

- determine whether the ward has an advance directive, such as a Health Care Power of Attorney, or Living Will.
- determine whether the ward is capable of expressing certain preferences about medical treatment, and end of life decisions.
- determine whether the ward expressed preferences about invasive medical treatments and end of life decisions prior to the adjudication of incompetence from consultation with the ward's family or friends, when the ward is no longer capable of expressing such preferences.
- determine what the ward's family's preferences are about invasive medical treatment and end of life decisions for the ward.

If the ward resides in a facility the assigned worker will give the facility administrator a copy of the guardian's Letters of Appointment and a copy of the agency's procedures (see below) for working with the wards.

The following information will be given to the facility administrator along with copies of the guardian's Letter's of Appointment:

MEDICAL TREATMENT FOR WARDS RESIDING IN FACILITIES

Facility staff will notify the guardian/guardian's representative in all instances where the ward has been injured, or is to be admitted to a medical facility, or requires emergency care outside of a medical facility, or needs permission for any type of medical care. FACILITY STAFF WILL NOT CONSENT TO ANY CARE, COUNSEL OR TREATMENT FOR THE WARD WITHOUT THE GUARDIAN'S CONSENT.

If an emergency situation (meaning that any delay in rendering medical treatment would seriously worsen the physical condition or endanger the life of the ward) occurs, facility staff will:

1. Contact the guardian or the guardian's representative(s) during normal business hours at _____ or the after hours worker at _____ after normal business hours and on weekends.

2. If after diligent attempts, facility staff are unable to reach the guardian or his representative(s) by telephone, the facility will explain to the treating physician that the guardian could not be contacted. Physicians may choose to treat patient's in emergency situations, without consent, to save the patient's life.

Signature of Guardian: _____

Date: _____

Signature of Administrator/Administrator's Representative: _____

Date: _____

I. DELEGATION OF CERTAIN DECISIONS

The guardian _____ delegates the following decisions to be
(Name of Guardian)
made (in writing or orally) by his representative(s) in conjunction with an approved guardianship service/treatment plan and the ward's and/or ward's family's participation in the decision(s) to be made:

- routine dental examinations, such as cleaning and simple extractions;

- purchase and use of prescription medications;
- authorization for flu shots;
- authorization for routine dental examinations, or occupational/physical therapy, or psychological services, or speech therapy;
- authorization for non-invasive medical procedures, such as, x-rays, blood tests (other than HIV/AIDS), setting broken limbs, and other procedures that do not require sedation or anesthesia;
- approvals for outings/visitation with family/friends known to the agency;
- approval of service/treatment plans by other agencies/facilities;
- participation in vocational/rehabilitation activities;
- purchase of pre-need burial plans; and
- planning for admission/movement to a facility or other least restrictive living arrangements.

NOTE: This list is not all inclusive. The guardian retains the right to delegate decision making authority to his representatives as needed and appropriate.

II. DECISIONS THAT WILL BE MADE BY THE GUARDIAN

The guardian retains the right to consent to the following on behalf of the ward:

- medical interventions requiring local or general anesthesia or interventions involving a moderate to significant risk to the ward, such as any type of invasive surgery;
- use of protective devices (geri-chairs for support, seizure helmets or mittens for self-injurious behaviors);
- extensive use of x-rays (including mammography),
- urinary catherization, and intravenous fluids;

- use of interventions that may drastically affect the appearance or functioning of the ward, such as amputations, eye and cosmetic surgeries;

- use of interventions which pose a significant risk to the ward due to the ward's condition or unique vulnerabilities, such as allergic reactions to dyes or penicillin, poor health problems, bleeding problems, and heart conditions;

- use of restrictive interventions, such as seclusion and physical restraint; or use of isolation time out;

- administration of psychotropic medications, such as Haldol, Stelazine, and anti psychotic medications, such as Clozaril, and Risperdal;

- use of experimental drug or treatment regimens;

- gynecological exams and prescriptions for contraceptives;

- entry of "do not resuscitate orders";

- removal of life support;

- HIV/AIDS testing;

- nasogastric (NG) and (PEG) tube insertions;

- Electroencephalograms (EEG)/Electrocardiograms (EKG);

- taking of photographs and/or videos.

To facilitate informed decisions about medical care/treatment for the ward by the guardian, the social worker will obtain a written statement or medical opinion from the treating or attending physician and, when necessary, a second opinion from a non-attending physician describing the following:

- the ward's current diagnosis;

- the reason for, and nature of the proposed treatment; and

- the alternative treatments or measures that are available and their respective risks, side effects and benefits.

III. DECISIONS INVOLVING EXTRAORDINARY MEANS

The guardian retains the right to consent to or refuse extraordinary means, such as entry of "do not resuscitate orders" or removal of life support for a ward. To facilitate informed decisions the following information will be necessary:

- the attending physician's statement/affidavit documenting that the ward's condition meets the criteria outlined in G.S. 90-322 and why extraordinary means should be discontinued or withheld;

- a second opinion from a non-attending physician in the form of a statement/affidavit documenting concurrence with the attending physician's statement/affidavit;

- evidence of any advance directives (Living Will, Health Care Power of Attorney) concerning the withholding or discontinuance of extraordinary medical procedures;

- summary of findings from face to face visit with the ward prior to refusal or authorization that extraordinary means be withheld or discontinued; and

- a statement or information from the ward's family members regarding the ward's wishes, if known, and their wishes for the ward, when possible.

NOTE: The guardian will not consent to blanket "do not resuscitate orders". Any requests for "do not resuscitate orders" will be considered on an individual basis as the need arises. "Do not resuscitate orders" signed by family members or someone other than the ward, prior to the guardianship appointment will be rescinded by the guardian and removed from the ward's records.

Sample Formats for Documenting Medical Information

1. Attending Physician's Statement Recommending Treatment For Ward
2. Non-Attending Physician's Statement Recommending Treatment For Ward
3. Desire for a "Do Not Resuscitate Order"
4. Physician's Affidavit (For Natural Death in Absence of Declaration)
5. Non-Attending Physician's Affidavit (For Natural Death in Absence of Declaration)

Appendix N

ATTENDING PHYSICIAN STATEMENT RECOMMENDING TREATMENT FOR WARD

NAME OF WARD:_____

DATE OF BIRTH: _____

1.

I, _____, AM A PHYSICIAN DULY QUALIFIED AND LICENSED TO PRACTICE MEDICINE IN NORTH CAROLINA, PURSUANT TO CHAPTER 90 OF THE GENERAL STATUTES OF NORTH CAROLINA AS AMENDED.

2.

I AM THE ATTENDING PHYSICIAN FOR _____, [HERE AFTER REFERRED TO AS THE "PATIENT"] AND HAVE HAD THE OPPORTUNITY TO EXAMINE HIM/HER ON _____ OF _____ , 20____.

3.

THE PATIENT'S DIAGNOSIS IS:_____
_____
_____

4.

THE REASONS FOR, NATURE OF, AND BENEFITS/NECESSITY OF TREATMENT ARE:
_____
_____
_____
_____

5.

THE POSSIBLE RISK AND SIDE EFFECTS TO THE PATIENT ARE:
_____
_____
_____
_____

6.

ALTERNATIVE TREATMENT AND THEIR SIDE EFFECTS TO THE PATIENT ARE AS FOLLOWS:
_____
_____
_____

ATTENDING PHYSICIAN'S STATEMENT RECOMMENDING TREATMENT FOR WARD

SIGNED :

THIS _____ DAY OF _____ , 20_____.

SIGNATURE: _____

_____
[PRINT NAME]

_____
[ADDRESS]

_____
[TELEPHONE]

I HEREBY ACKNOWLEDGE THAT _____, IN MY PRESENCE, THIS _____ DAY OF _____, 20_____ ,
AFTER BEING DULY SWORN, SIGNED AND ACKNOWLEDGED THE PHYSICIAN'S STATEMENT RECOMMENDING TREATMENT.

_____
NOTARY PUBLIC

MY COMMISSION EXPIRES: _____

NON-ATTENDING PHYSICIAN'S STATEMENT RECOMMENDING TREATMENT FOR WARD

NAME OF WARD: _____
DATE OF BIRTH: _____

1.

I, _____, AM A PHYSICIAN DULY QUALIFIED AND LICENSED TO PRACTICE MEDICINE IN NORTH CAROLINA, PURSUANT TO CHAPTER 90 OF THE GENERAL STATUTES OF NORTH CAROLINA AS AMENDED.

2.

I AM NOT THE ATTENDING PHYSICIAN FOR _____ [HERE AFTER REFERRED TO AS THE "PATIENT"] BUT I HAVE HAD THE OPPORTUNITY TO EXAMINE HIM/HER ON _____ OF _____, 20_____.

3.

THE PATIENT'S DIAGNOSIS IS:

_____
_____
_____

4.

THE REASONS FOR, NATURE OF, AND BENEFITS/NECESSITY OF TREATMENT, ARE:

_____
_____
_____
_____

5.

THE POSSIBLE RISK AND SIDE EFFECTS TO THE PATIENT ARE:

_____
_____
_____

6.

ALTERNATIVE TREATMENT AND THEIR SIDE EFFECTS TO THE PATIENT ARE AS FOLLOWS:

_____
_____

SIGNED:

THIS_____ DAY OF_____, 20 _____.

SIGNATURE: _____

_____
[PRINT NAME]

_____
[ADDRESS]

_____
[TELEPHONE]

I HEREBY ACKNOWLEDGE THAT _____, IN MY PRESENCE, THIS _____ DAY OF _____, 20_____, AFTER BEING DULY SWORN, SIGNED AND ACKNOWLEDGED THE PHYSICIAN'S STATEMENT RECOMMENDING TREATMENT.

_____
NOTARY PUBLIC

MY COMMISSION EXPIRES: _____

DESIRE FOR A "DO NOT RESUSCITATE ORDER"

I/WE THE UNDERSIGNED ACKNOWLEDGE THAT WE PARTICIPATED IN A DISCUSSION WITH
_____, GUARDIAN OF
_____
WHO IS IN A COMA AND IS MENTALLY INCAPACITATED.

WE UNDERSTAND THAT THE PATIENT'S CONDITION IS TERMINAL, AND INCURABLE. OR DIAGNOSED AS A PERSISTENT VEGETATIVE STATE. WE FURTHER UNDERSTAND THAT THERE IS NO ADVANCE CARE DOCUMENT.

WE AGREE THAT THE USE OF EXTRAORDINARY MEANS SUCH AS CARDIAC RESUSCITATION (CPR), MECHANICAL VENTILATION (USE OF A RESPIRATOR) ARE NOT APPROPRIATE AND WILL NOT BE BEGUN.

DATE OF DISCUSSION _____

APPROPRIATE SIGNATURES: _____ _____
[NAME] [DATE]

_____ _____
[NAME] [DATE]

_____ _____
[NAME] [DATE]

THIS _____ DAY OF _____, 20_____

I HEREBY ACKNOWLEDGE THAT _____
IN MY PRESENCE, THIS _____ DAY OF_____, 20_____.
SIGNED AND ACKNOWLEDGED THE ABOVE STATEMENT.

_____
NOTARY PUBLIC

MY COMMISSION EXPIRES: _____

Physician Affidavit

For Natural Death In
Absence of Declaration
(Pursuant to G.S. 90-322)

==========

COMES NOW the undersigned Affiant, _____, who, after first being duly sworn, deposes and states the following:

1.

This Affidavit is made on Affiant's own personal knowledge and belief,

2.

Affiant is a physician duly qualified and licensed to practice medicine in North Carolina pursuant to Chapter 90 of the General Statutes of North Carolina as amended.

3.

Affiant is attending physician for _____ (hereinafter referred to as the "patient").

4.

The patient was born on the ____ day of _____, 19_____.

5.

The patient's current diagnosis and condition is:

_____
_____
_____
_____
_____

6.

Affiant is the attending physician for the above named patient and affiant has determined to a high degree of certainty that the patient lacks capacity to make and communicate health care decisions and the patient will never regain that capacity, and:

1) That the patient: (Please circle appropriate condition)
   (a) Has an incurable or irreversible condition that will result in the patient's death within a relatively short period of time; or
   (b) Is unconscious and, to a high degree of medical certainty, will never regain consciousness; and
2) There is confirmation of the patient's present condition as set out above in writing by a physician other than the attending physician; and
3) A vital bodily function of the patient could be restored or is being sustained by life-prolonging measures;
4) Then, life-prolonging measures may be withheld or discontinued in accordance with and upon the direction and supervision of the attending physician with the concurrence of the persons listed in G.S. 90-322(b) in the order indicated.

Further Affiant Sayeth Naught.

This _____ day of _____, 20___.

Signature: _____

_____
(Print Name)

_____
(Address)

_____
(Telephone)

I hereby acknowledge that
_____,
in my presence, this _____ day of _____, 20_____, after being first sworn, signed and acknowledged the foregoing **"Physician's Affidavit"**.

_____ My commission expires: _____
Notary Public

Non-Attending Physician's Affidavit
For Natural Death in
Absence of Declaration
(Pursuant to G. S. 90-322)

==========

COMES NOW the undersigned Affiant,
_____, who, after first being duly sworn, deposes and states the following:

1.

This Affidavit is made on Affiant's own personal knowledge and belief.

2.

Affiant is a physician duly qualified and licensed to practice medicine in North Carolina pursuant to Chapter 90 of the General Statutes of North Carolina as amended.

3.

Affiant is NOT the attending physician for the patient,
_____.

4.

The patient was born on the _____ day of _____, 19_____.

5.

Affiant has examined the patient.

6.

Affiant, hereby, confirms the diagnosis and condition of the patient as set forth in the foregoing and attached "Physician's Affidavit For Natural Death in Absence of Declaration (Pursuant to G.S. 90-322)" dated the _____ day of _____, 20_____.

Appendix P

(Sample Format)
Guidelines to Facilitate Inter-County Cooperation Around Guardianship Services Provision

PURPOSE:
(State why your agency has chosen to develop specific guidelines around guardianship services provision.)

Example:
The purpose of this document is to establish guidelines to facilitate communication, cooperation and collaboration between agencies around guardianship service provision; and a community approach to guardianship service delivery established through a positive working relationship with other local human services agencies, long term care facilities, hospitals, and individuals in the community.

PHILOSOPHY:
(Please state below your agency's mission or mandate to provide for adults who are alleged to be incompetent)

Example:
It is the mission of (Name of Agency) to safeguard the rights and maximize the autonomy of incapacitated adults who request services or for whom services are requested through this agency. The (Name of Agency) will provide guardianship services when requested by individuals, family members and others as delineated below. Services may include conducting an assessment to determine whether guardianship is the appropriate alternative to meet the alleged incompetent adult's needs, determining which type guardianship is most appropriate, and who is most appropriate to recommend to the court to serve as guardian(s); this may also include assisting family members, or others with information to allow them to petition for the adjudication of incompetence and appointment of a guardian; when necessary petitioning for the adjudication of incompetence and appointment of a guardian; and when no individual, or corporation is available and willing to serve or when ordered by the court, serving as guardian of the person, as appropriate.

The following guidelines reflect the mission of this agency in relationship to how we will respond to requests for Guardianship Services.

I. REQUESTS for GUARDIANSHIP SERVICES

In order to fulfill the mission that has been outlined above, (Name of Agency) will respond as follows to requests for guardianship services:

A. When this agency is contacted by another agency requesting assistance with guardianship services for an alleged incompetent adult this agency will:

1. Review with the caller the pertinent information related to the request to determine whether it is a need that can be met through this agency;

2. Discuss the caller's expectations in order to determine whether the alleged incompetent adult is in need of immediate intervention;

3. Discuss the caller's expectations of this agency (e.g. assisting with an assessment to determine whether guardianship is appropriate to meet the identified needs; locating family/friends to determine whether they may be appropriate to serve as guardian; petitioning for guardianship, or serving as guardian);

4. Determine whether the alleged incompetent adult receives services/benefits from this agency;

5. If the alleged incompetent adult resides in this county and receives services/benefits from this agency, assist with the provision of guardianship services, and when appropriate serve as guardian;

6. If the alleged incompetent adult resides in the county where the agency requesting assistance is located, but the adult receives services/benefits from this agency, assist the caller with providing services (as outlined in the philosophy above) to the alleged incompetent adult; and when appropriate, serve as guardian.

7. If the alleged incompetent adult resides in this county, and receives services/benefits from an agency in another county, request that agency's assistance with providing services, including requesting that agency serve as guardian, when appropriate.

B. When this agency is contacted by family members, other local human services agencies, long term care facilities, hospitals, and other individuals requesting assistance with guardianship services on behalf of an alleged incompetent adult with whom they are familiar, this agency will:

1. Provide relevant information about guardianship services, including the necessary steps involved with the petitioning process and refer them to appropriate resources (clerks of court, attorneys) to assist with petitioning for the adjudication of incompetence and the appointment of a guardian;

2. Assist the caller with providing services (as outlined above) to the alleged incompetent adult if the alleged incompetent adult is an inpatient in a hospital, adult care home or other long term care facility in a county different from this county, and receives services/benefits from this agency, and when appropriate, serve as guardian.

NOTE:
This agency requests to be notified of the date and time of any court hearings in all instances where this agency is being recommended to the court to serve as guardian. This agency reserves the right to conduct an independent assessment of the alleged incompetent adult's need for a guardian prior to the hearing. This agency also reserves the right to make its own recommendation to the court as to the appropriateness of the guardianship and who is best suited to serve as guardian, consistent with the priority for appointment in the guardianship statute.

II. FILING GUARDIANSHIP PETITIONS

A. According to [N.C. G.S. 35A-1105], anyone may file a petition for the adjudication of incompetence with the clerk of superior court. According to [N.C. G.S. 35A-1103], venue for the hearing for the adjudication of incompetence may be held in the county where the alleged incompetent adult resides, is domiciled, is an inpatient in a treatment facility, or is present.

B. This agency is not under a legal mandate to file petitions for the adjudication of incompetence and the appointment of guardians on behalf of adults alleged to be incompetent.

C. However, because of this agency's mission and commitment to the community, this agency will file petitions for the adjudication of incompetence and appointment of a guardian on behalf of alleged incompetent adults when we have determined that guardianship is the appropriate alternative to meet the adult's needs. This agency will file petitions when:

1. The alleged incompetent adult is currently receiving services, such as Adult Protective Services, At-Risk Case Management; or receiving benefits, such as, Medicaid, or other services/benefits from this agency, and guardianship services are an integral part of the over-all service plan; or

2. The alleged incompetent adult resides in this county, in a private home, adult care home, or other long term care facility, and guardianship is the appropriate alternative to meet that adult's needs; or

3. Family members and other individuals request guardianship services, and are willing to serve as guardians for alleged incompetent adults, and can not afford the costs associated with guardianship court proceedings; or

4. Another agency requests this agency's assistance with providing guardianship services to an alleged incompetent adult who resides in this county, but receives services/benefits from the agency in the county requesting assistance.

D. To facilitate inter-county cooperation and assist adults in need of guardianship services, this agency will:

1. File petitions on behalf of an alleged incompetent adult located in this county, when the adult receives services/benefits from another county, if the county where the adult receives services/benefits will agree to become guardian, if this does not preclude the guardian from being able to act in the ward's best interest. This agency will file the petition for the adjudication of incompetence, and request that the clerk transfer venue for the appointment of the guardian to the county of the agency that has agreed to serve as guardian.
2. Serve as guardian, as appropriate, when an alleged incompetent adult receives services/benefits from this agency, and is located in a different

county. The agency in the county where the adult is located will be asked to file the petition for the adjudication of incompetence hearing and request that the clerk transfer venue for the appointment of the guardian to this county.

3. Discuss the feasibility of a cooperative agreement between the two agencies to assist the guardian with monitoring the ward's care, comfort and maintenance when the guardian is not in close proximity to where the ward is located.

4. Expect other local human services agencies, adult care homes, hospitals and others that have personal knowledge about an adult, or are currently providing services/treatment to the adult; or have facts supporting the adult's need for a guardian, to file any guardianship petitions they feel are necessary to meet the needs of the adult.

III. SERVING AS GUARDIAN

The agency will recommend that an individual, corporation or disinterested public agent be appointed guardian when a determination is made that guardianship will benefit the adult. This is in keeping with the statute that stipulates disinterested public agents serve as guardians of last resort when no individual, or corporation is available and willing to serve. Whenever a disinterested public agent is needed to serve as guardian, this agency, in keeping with guidance from the NC Division of Social Services, believes that the local human services agency providing the services, or treatment most closely matching the nature of the proposed ward's primary needs should be recommended to serve as guardian.

A. Guardianships of the Person

This agency will consider the following as it relates to serving as guardian of the person for incompetent adults:

1. If the adult's primary needs are for general oversight and services not in the areas listed below, this agency will agree to serve as guardian of the person;

2. If the adult's primary needs are related to mental health, developmental disabilities or substance abuse services, this agency will recommend that an area mental health program be appointed guardian of the person; and

3. If the adult's primary needs are related to medical treatment for a severe physical impairment that requires highly specialized medical expertise, this agency will recommend that the local health department be appointed guardian of the person.

4. If this agency has petitioned for interim guardianship and served as interim guardian, this agency will follow the procedures written above when recommending a guardian of the person for an alleged incompetent adult.

NOTE: To facilitate intra-county cooperation it will be necessary to have discussions with staff in other local human services agencies and the clerk about how guardianship

issues will be handled in this community. Ideally these discussions should take place before making recommendations based on the above to the clerk of court.

B. Guardianships of the Estate and General Guardianships

1. This agency believes that estate guardianship appointments should be held by those individuals who have expertise in managing such complex fiduciary matters. This agency will, therefore, recommend to the court, that whenever a disinterested public agent is needed to serve as guardian of the estate for an incompetent adult, the court appoint an attorney or a public guardian (an attorney appointed by the clerk for a period of up to eight years to serve as guardian) to manage this responsibility.

2. When the clerk does not appoint an attorney or public guardian, and orders this agency to serve as guardian of the estate or general guardian, the public agent must serve, if so ordered. This agency, however, reserves the right to request that the clerk allow commissions to be paid to the public agent guardian out of the ward's estate as is paid to attorneys and other individuals, for time and trouble in administering a ward's estate. This is in keeping with [N.C.G.S.35A-1269] that allows the guardian of the estate to be paid a commission of up to a maximum of 5% on all income received and 5% on all expenses paid from the ward's estate, at the clerk's discretion. This is also in keeping with [N.C.G.S.35A-1251(14)] which authorizes the guardian of the estate to use the ward's funds to employ experts, such as, attorneys, auditors, investment advisors to assist the guardian in managing the ward's estate. This agency will only request a commission or use of the ward's funds when the ward's estate is sufficient to meet all of the ward's needs and support payment of a commission or use of the ward's funds to employ experts to manage the ward's estate.

3. This agency will also recommend to the court that this agency not be appointed general guardian for an incompetent adult when that adult's assets consist of income that can be managed by a representative payee.

C. Interim Guardianships

1. This agency will petition for interim guardianship on behalf of adults alleged to be incompetent when their conditions constitute or reasonably appear to constitute an imminent or foreseeable risk of harm to their person and/or their assets, and they are unable to protect themselves and/or their property.

2. This agency will ask the clerk to set out the specific powers and duties of the interim guardian in all orders issued.

3. This agency will not perform any duties on the ward's behalf that are not authorized in the clerk's order, or are outside of the timeframe of 45 to 90 of the interim guardianship appointment.

Appendix Q

Sample Format: COOPERATIVE AGREEMENT

The (Nameof Agency), guardian of the person for (Name of Ward), enters into a cooperative agreement with (Name of Agency) to assist the director/assistant director, as disinterested public guardian in carrying out his/her legal mandate to provide for the ward's care, comfort, and maintenance as outlined in [N.C.G.S. 35A-1214]. The ward resides in another county that is not located in close proximity to the county where the guardian is located. It may be difficult for the guardian/guardian's representative to monitor the wards care, comfort, and maintenance as the law requires. This agreement is in effect because (Name of Ward), ward of the director/assistant director resides in the county where the (Name of Agency) is located and has agreed to assist with monitoring the (Name of Ward) care.
This agreement made and entered into this ____ day of _____, 20___, by and between (Name of Guardian), the director/assistant director of the (Name of Agency), and guardian of the person for the ward, (Name of Ward) and the (Name of Agency) in county where the ward is located.
The (Name of Agency Where Guardian is Located) asks that the (Name of Agency Where Ward is Located) assist with the following and it is agreed between the parties that:

1. The (Agency Where Ward is Located) will provide visits to monitor the ward's care/treatment while the ward is a resident in (Name of Facility) for the purpose of assisting the guardian in overseeing the health, and well-being of the ward. This may include monitoring the ward's living arrangements, and keeping the guardian informed about the ward's care, counsel, treatment and maintenance. This may also include sending written information about wards to the guardian to assist the guardian with carrying out his or her legal decision making responsibilities. Such visits will occur at least (length of time) during the current calendar year.

2. After such visits the (Agency Where Ward is Located) will contact the guardian's representative by telephone, email, or mail to report on the ward's condition, needs, or problems.

3. In the event new needs/problems arise regarding the ward, the (Agency Where Ward is Located) will inform the guardian/guardian's representative in the same manner as listed above. If it is after-hours, contact the (After-hours telephone Number).

4. In the event of an emergency (ward is found to be at risk of harm), contact the guardian/guardian's representative at (telephone number) immediately by telephone, if during normal business hours. If it is after normal hours or on the weekend, contact the telephone number listed in #4 above. The (Agency Where the Ward is Located) **is not** expected to make decisions regarding the ward. The guardian/guardian's representative will continue to make all decisions regarding the ward's well-being.

5. In the event the (Agency Where the Ward is Located) requires assistance with monitoring
a ward's care, and that ward is located in this county, this agency will assist the (Agency Where the Ward is Located) in a like manner, as listed above.
This agreement will be become effective when both parties agree to its contents and shall continue in effect until canceled, in writing, at anytime by either party.

_____
(Name of Public Agent Guardian)

_____
(Name of Agency Assisting Guardian)

_____
(Agency)

_____
(Date)

_____
(Date)

Note: Agencies that request reimbursement for assisting other agencies with the provision of guardianship services may include the details of such arrangements.