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4.9 Guardian Decision Making

Policy:

It is the policy of the OPG Program to follow the NGA standards in decision making for our Protected Persons.

Procedure:

In making decisions with and on behalf of protected persons:

- 1) OPG uses the National Guardianship Association's (NGA) Standards of Practice including the standards for **informed consent, substituted judgment, best interest and least restrictive alternative**.
- 2) OPG supports protected person decision-making to the fullest extent possible, and uses the principles of supported decision making to assist protected persons in self-determination, honoring diversity, personal preferences and personal values to the extent allowed by Oregon law.
- 3) OPG supports the least restrictive placements and decisions possible, given the values and personal preferences of the protected person, and actively advocates for care and services that meet this standard.
- 4) OPG assures that its decisions will be made in accordance with NGA standards, and that decisions will be in accord with a court's guardianship and/or conservatorship orders for a protected persons, and applicable Oregon Revised Statutes (ORS).

Informed Consent

- 1) Decisions made on behalf of the protected person are based on the principle of Informed Consent, which is agreement to a course of action based on a full disclosure of facts needed to make the decision intelligently, with voluntary action, and lack of coercion.
 - a) The guardian stands in the place of the protected person and is entitled to the same information and choice the protected person would have received if the protected person had capacity.
- 2) In evaluating each requested decision, the guardian shall do the following:
 - a) Have a clear understanding of the issue for which informed consent is being sought,
 - b) Have a clear understanding of the options, expected outcomes, risks and

- benefits of each alternative,
- c) Determine the conditions that necessitate treatment or action,
 - d) Encourage and support the person in understanding the facts and directing a decision,
 - e) Maximize the participation of the protected person in making the decision,
 - f) Determine whether the protected person has previously stated preferences,
 - g) Determine why this decision needs to be made now rather than later,
 - h) Determine what will happen if a decision is made to take no action,
 - i) Determine what the least restrictive alternative is for the situation,
 - j) Obtain a second medical or professional opinion, if necessary,
 - k) Obtain information or input from family and from other professionals, and
 - l) Obtain written documentation of all reports relevant to each decision.

Substituted Judgment, Best Interest and Least Restrictive Decisions

Substituted Judgment

- 1) Substituted Judgment is the principle of decision-making that substitutes the decision the protected person would have made when the person had capacity as the guiding force in any surrogate decision the guardian makes.
- 2) Substituted Judgment promotes the underlying values of self-determination and well-being of the person.
- 3) Substituted Judgment is not used when following the protected person's wishes would cause substantial harm to the person or when the guardian cannot establish the person's goals and preferences even with support.

Best Interest Standard

- 1) Best Interest is the principle of decision-making that should be used only when the protected person has never had capacity, when the person's goals and preferences cannot be ascertained even with support, or when following the person's wishes would cause substantial harm to the person.
- 2) The Best Interest principle requires the guardian to consider the least intrusive, most normalizing, and least restrictive course of action possible to provide for the needs of the person.
- 3) The Best Interest principle requires the guardian to consider past practice and evaluate reliable evidence of likely choices.

Least Restrictive Alternative

- 1) The guardian shall carefully evaluate the alternatives that are available and choose the one that best meets the personal and financial goals, needs, and preferences of the person under guardianship while placing the least restrictions on his or her freedom, rights, and ability to control his or her environment.

- 2) The guardian shall weigh the risks and benefits and develop a balance between maximizing the independence and self-determination of the person and maintaining the person's dignity, protection and safety.
- 3) The guardian shall make individualized decisions. The least restrictive alternative for one person might not be the least restrictive alternative for another person.
- 4) The following guidelines apply in the determination of the least restrictive alternative:
 - a) The guardian shall become familiar with the available options for residence, care, medical treatment, vocational training, and education.
 - b) The guardian shall strive to know the person's goals and preferences.
 - c) The guardian shall consider assessments of the person's needs as determined by specialists. This may include an independent assessment of the person's functional ability, health status, and care needs.

Medical Treatment

In making medical treatment decisions for a protected person, the guardian will only make decisions authorized by the court's orders for the person and as permitted by Oregon Revised Statutes. In accord with NGA Practice Standards, the guardian will:

- 1) Promote and monitor the protected person's health and well-being, ensuring that all medical care for the person is appropriately and timely provided.
- 2) Grant/deny authorization for medical interventions only after careful consideration to criteria in the informed consent section above, and given the time frames required by the decision.
- 3) Seek a second opinion for any medical treatment or intervention that would cause a reasonable person to do so or when a medical intervention poses a significant client risk.
- 4) Under extraordinary medical circumstances, enlist ethical, legal, and medical advice with particular attention to the advice of ethics committees.
- 5) Speak directly with the treating or attending physician before authorizing or denying any medical treatment when possible.
- 6) Not authorize extraordinary procedures without prior authorization from the court, if needed, include, but not limited to:
 - a) Psychosurgery,
 - b) Sterilization (substitute consent not allowed under ORS 436-225(2)),
 - c) Abortion, and
 - d) Electroshock therapy.
- 7) Receive approval from the Oregon Public Guardian before authorizing experimental treatment or surgery with life altering consequences, including removal or modification of major organs and amputation or removal of extremities.
- 8) Request and consider family and/or significant other input when making medical decisions when doing so would benefit the protected person.

- 9) Not authorize HIV testing for the needs of a non-client without management consultation (note: under Oregon law, the client MD can share information with the client's partner).

Medical Decision Authorizations and Documentation

Basic Process

Medical decisions are documented in EMS notes, as soon as is practical after a decision is made. If a decision was authorized by a different staff member, a copy of the file note or a voicemail message should go to the Deputy in charge of the case as soon as the decision is made.

Medical Issues that May Continue into the Evening

- 1) Inform OPG on-call staff member of issue via email, including whether you want to be contacted at home/under what circumstances.
- 2) Inform provider of OPG staff availability/after-hours number.

Surgery Consents

Document your consent (with whom you spoke, what you authorized verbally, exactly what you signed and where you faxed the forms) in a note in EMS file on the **SAME DAY** you gave consent.

Off-Hours Medical Authorizations

- 1) Inform the Deputy (or their back-up) by 8:30am on the morning of the first business day.
- 2) Document the authorization in a file note by the end of that first business day.

Effective Date: June 2017

Updated March 2022

Next review: as needed

Approved: 