

1994—No. 34

GUARDIANSHIP ACT 1987—REGULATION

(Relating to medical and dental treatment)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Guardianship Act 1987, has been pleased to make the Regulation set forth hereunder.

JAMES LONGLEY, M.P.,
Minister for Community Services.

Commencement

1. This Regulation commences on 1 February 1994.

Amendments relating to consent and requests for consent

2. The Disability Services and Guardianship (General) Regulation 1989 is amended:

- (a) by omitting from the definition of “the Act” in clause 3 (1) the words “Disability Services and”;
- (b) by omitting from clause 8 (1) (b) the words “orally or in writing” and by inserting instead the words “in writing, or if it is not practicable to do so, orally”;
- (c) by omitting clause 8 (2) and by inserting instead the following subclauses:
 - (2) A request under section 40 of the Act for consent to the carrying out of major medical treatment is to be made in writing. However, the request may be made orally if it is not practicable to make the request in writing because of the need to provide the treatment quickly.

(3) A person who requests a consent referred to in this clause must give written confirmation of the request to the person whose consent is sought if the request was made orally and:

- (a) sought consent to major treatment; or
- (b) the person whose consent is sought requires the written confirmation.
- (d) by omitting from clause 9 (1) (b) the words “orally or in writing” and by inserting instead the words “in writing, or if it is not practicable to do so, orally”;
- (e) by omitting clause 9 (2) and by inserting instead the following subclauses:

(2) A consent under section 40 of the Act to the carrying out of major medical treatment is to be given in writing. However, the consent may be given orally if it is not practicable to do so in writing because of the need to provide the treatment quickly.

(3) A person who gives a consent referred to in this clause must give written confirmation of the consent to the person whose consent is sought if the consent was given orally and:

- (a) consented to major treatment; or
- (b) the person who requested consent requires the written confirmation.

Other amendments consequential on Guardianship (Amendment) Act 1993

3. The Disability Services and Guardianship (General) Regulation 1989 is further amended:

- (a) by inserting after the definition of “restricted substance” in clause 3 (1) the following definition:

“simple sedation” means a technique in which the use of a drug or drugs produces a state of depression of the central nervous system enabling treatment to be carried out, and in which:

- (a) verbal contact with the patient is maintained throughout the period of sedation; and
- (b) the drugs and techniques used have a margin of safety wide enough to render unintended loss of consciousness unlikely;
- (b) by omitting from clause 3 (2) the words “at the end of a clause” and by inserting instead the words “in this Regulation”;

(c) by omitting clauses 4 and 5 and by inserting instead the following clauses:

Special medical treatment

4. The following medical treatment is declared to be special treatment for the purposes of Part 5 of the Act:

Any treatment that involves the administration of a drug of addiction (other than in association with the treatment of cancer or palliative care of a terminally ill patient) over a period or periods totalling more than 10 days in any period of 30 days.

Any treatment that is carried out for the purpose of terminating pregnancy.

Any treatment in the nature of a vasectomy or tubal occlusion.

Any treatment that involves the use of anaversive stimulus, whether mechanical, chemical, physical or otherwise.

Experimental special medical treatment to which Board may consent

5. The following medical treatment is prescribed special treatment for the purposes of section 45 (3) (b) of the Act:

Any special treatment that involves the administration to a patient of one or more restricted substances for the purpose of affecting the central nervous system of the patient, but only if the dosage levels, combinations or the numbers of restricted substances used or the duration of the treatment are outside the accepted mode of treatment for such a patient.

Any special treatment that involves the use of androgen reducing medication for the purpose of behavioural control.

(d) by omitting clause 6 and by inserting instead the following clause:

Major medical treatment

6. The following medical treatment (not including any special treatment) is declared to be major treatment for the purposes of Part 5 of the Act:

Any treatment that involves the administration of a long-acting injectable hormonal substance for the purpose of contraception or menstrual regulation.

Note: An example of such a substance is medroxyprogesterone acetate, in suspension, commonly known as Depo-Provera.

Any treatment that involves the administration of a drug of addiction.

Any treatment that involves the administration of a general anaesthetic or other sedation, but not treatment involving:

- (a) sedation used to facilitate the management of fractured or dislocated limbs; or
- (b) sedation used to facilitate the insertion of an endoscope into a patient's body for diagnostic purposes unless the endoscope is inserted through a breach or incision in the skin or a mucous membrane.

Any treatment used for the purpose of eliminating menstruation.

Any treatment that involves the administration of a restricted substance for the purpose of affecting the central nervous system, but not a treatment:

- (a) involving a substance that is intended to be used for analgesic, antipyretic, antiparkinsonian, anticonvulsant, antiemetic, antinauseant or antihistaminic purposes; or
- (b) that is to be given only once; or
- (c) that is a PRN treatment (that is, given when required, according to the patient's needs) that may be given not more than 3 times a month; or
- (d) given for sedation in minor medical procedures.

Any treatment that involves a substantial risk to the patient (that is, a risk that amounts to more than a mere possibility) of:

- (a) death; or
- (b) brain damage; or
- (c) paralysis; or
- (d) permanent loss of function of any organ or limb; or
- (e) permanent and disfiguring scarring; or
- (f) exacerbation of the condition being treated; or
- (g) an unusually prolonged period of recovery; or
- (h) a detrimental change of personality; or
- (i) a high level of pain or stress.

Any treatment involving testing for the human immuno-deficient virus (HIV).

(e) by omitting clause 7 and by inserting instead the following clause:

Major dental treatment

7. The following dental treatment is declared to be major treatment for the purposes of Part 5 of the Act:

Any treatment involving the administration of a general anaesthetic or simple sedation.

Any treatment intended, or likely, to result in the removal of all teeth.

Any treatment likely to result in the patient's ability to chew food being significantly impaired for an indefinite or prolonged period.

- (f) by omitting from clauses 8 and 9 the matter "or 41" wherever occurring;
- (g) by omitting clause 10;
- (h) by omitting clause 12.

EXPLANATORY NOTE

The object of this Regulation is to change the manner and form of requests for consent to treatment and consents to treatment.

The Regulation also updates the Disability Services and Guardianship (General) Regulation 1989 as a result of changes made to the Guardianship Act 1987 by the Guardianship (Amendment) Act 1993. Categories of treatment are also revised and updated by the Regulation.

Amendments relating to consents and other matters

The Regulation amends the Disability Services and Guardianship (General) Regulation 1987 to:

- (a) amend the definition of "the Act" in clause 3 (1) to reflect the changed title of the Guardianship Act 1987 (formerly the Disability Services and Guardianship Act 1987); and
- (b) to require written consents, and written requests for consent, to major medical or dental treatment proposed to be carried out on a person under guardianship to be given and made in writing, except where an oral consent or request is necessary because of the need to provide treatment quickly to a patient; and
- (c) to require written consents, and written requests for consent, to minor medical or dental treatment proposed to be carried out on a person under guardianship, if requested and if practicable.

Amendments resulting from the Guardianship (Amendment) Act 1993

The Regulation amends the Disability Services and Guardianship (General) Regulation 1987 to prescribe, as a result of the substitution of the relevant definitions by the Guardianship (Amendment) Act 1993, treatments included as major treatment, dental treatment or special treatment for the purposes of the Guardianship Act 1987. In doing so, the Regulation revises and updates existing categories so as to:

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- (a) exclude from special medical treatment to which only the Board may consent (or authorise consent) treatments with drugs of addiction in association with the treatment of cancer or palliative care of terminally ill patients (new clause 4); and
- (b) omit provisions about experimental medical treatments (now provided for by new section 36 of the Act); and
- (c) prescribe experimental medical treatment to which the Board may consent (new clause 5); and
- (d) exclude from major medical treatment to which the consent of the person responsible for the patient must be obtained simple sedation procedures where a sedative is administered for the purpose of simple diagnostic procedures using an endoscope (new clause 6); and
- (e) include, as major medical treatments, treatments involving the use of medication to eliminate menstruation and testing for the human immuno-deficient (HIV) virus and to make other minor amendments to the matters included as major medical treatments (new clause 6); and
- (f) include matters as major dental treatment, including treatment involving the administration of a general anaesthetic or simple sedation (new clause 7).

The Regulation also makes other minor amendments as a result of the amendment of the Act.

The Regulation is made under the Guardianship Act 1987, including sections 33, 40, 45 and 108 (the general regulation making power).
