BGS' Statutory Responsibilities

- File a guardianship (Title 30, N.J.A.C 10:43) for eligible individuals.
- Serve as Guardian of Person (Title 3B, Title 30, N.J.A.C 10:45, 10:48B).

Guardianship

- Guardianship is a legal determination, based on clinical information that an individual lacks some or all decision making ability.
- A guardian is a person or an agency appointed to make decisions on behalf of a person in accordance with the court order.
- Alternatives to guardianship should be considered prior to seeking adjudication. Guardianship is a last resort, protective measure.
- Due process is necessary.

BGS Petitioning the Court for the appointment of a Guardian:

- BGS Legal Unit supervised by an attorney petitions the court, 100+ cases per year, must triage cases based on resources, need for BGS and individual circumstances,
  - BGS is only permitted to file or serve for a person who is DDD eligible and receiving services
  - There is no cost to the individual for BGS' services.
  - BGS is guardian of last resort
  - In most cases where BGS is the plaintiff, BGS is petitioning to be appointed however if family is located/available and appropriate, BGS may petition to have family appointed.
- Referrals received through DDD Liaison or DCF in extraordinary circumstances or we may receive notice directly from the court seeking our appointment.
- There is no presumption of incapacity, due process is followed.
- The legal process takes time, cases filed privately or emergently by hospitals or APS generally move faster.
- OAG represents BGS, PD represents the individual after a hearing, a judgment may be entered.

BGS as Guardian

- Once a judgment appointing BGS is entered, BGS has decision making responsibilities up to and including end-of-life decisions.
- Currently BGS is Guardian of person for approximately 2000 people.
- A guardianship specialist is assigned to work with each individual and has primary decision making responsibility but BGS is guardian of record.
- On-call 24/7 for emergencies.
- Guardianship Specialists are in the field, visiting individuals in all settings, gathering information, getting to know the person, asks questions of caregivers, family, etc.
- Guardianship Specialists advocate for and protect the individual, give or withhold consent.
- Annual report of well-being with recommendations for the plan of care is completed.
- Decisions are made consistent with the principles of, substitute decision making, best interest standard and informed consent .
- Family may stay involved but BGS is the decision maker.
- Although not guardian of estate, some authority for transactions exists such as benefits applications, change of payee, burial funds, leases/residential agreements.
- BGS does not become payee.

Keeping Guardians Informed

- Since BGS is not custodial caregiver:
- Prompt notification of significant events involving a person served by BGS is required.
- BGS can not effectively meet the needs of the people we serve without sufficient information.

- Immediate notification is required when:
  - Alleged or suspected abuse, neglect, exploitation or denial of rights
  - Serious illness or injury
  - Death, including circumstances, cause, results or investigation if any
  - Request of an individual to see his/her BGS

Guardian's Considerations with regard to protecting individuals

- Substitute Decision Making vs. Best Interest Standard striking a balance.
- Informed consent, risks, benefits, alternatives to all decisions.
- Limitations to a guardian's authority, accepting Dignity of Risk
- Mitigating Risks when possible
- Navigating systems and supporting people through the process based on their needs.
- Pressing Charges on Behalf of an individual

General Considerations for protecting individuals with ID/DD

- General vulnerability
- Individualized resources, supervision, support, advocacy, oversight, collaboration are critical
- Navigating systems such as the Criminal Justice System
- Victim Services

Bureau of Guardianship Services Contact Information

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