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1001-A BASIC HUMAN AND DISABILITY RELATED RIGHTS

REVISION DATE: 7/3/2015

EFFECTIVE DATE: July 31, 1993

REFERENCES: A.R.S §§ 23-363, 36-551(01)(0), 36-554(A)(0), 36-568(01), 41-3801, 8-533; 41-1492 et seq., 41-1959; A.A.C. R6-6-102(C), R6-6-104, R6-6-107, R6-6-804(9), R6-6-901, R6-6-901-910 et seq., R6-6-1801 et seq., R6-6-2002-2003; 42 CFR 438.420(a).

Arizona Revised Statutes (A.R.S.) clearly recognizes that a person with a developmental disability has the rights, benefits, and privileges guaranteed by the constitutions and laws of the United States and the State of Arizona.

The rights of a person with a developmental disability receiving supports and services through the Division include the:

- A. Right to an initial Individual Support Plan/Individualized Family Services Plan (ISP/IFSP) planning document prior to receiving supports and services;
- B. Right to participate in the ISP/IFSP, periodic evaluations, and whenever possible, the opportunity to select among appropriate alternative supports and services;
- C. Right (once accepted for supports and services) to participate and share in decision making, and to receive a written ISP based upon relevant results of the placement evaluation;
- D. Right to information regarding the supports and services available through a provider and about related charges, including any fees for supports and services not covered by a third-party payor;
- E. Right to a periodic review of the ISP/IFSP planning document;
- F. Right to be given written notice of his/her rights;
- G. Right to exercise his/her rights as a citizen;
- H. Right to live in the least restrictive setting. A least restrictive setting refers to an environment in which a member strives to reach his/her full potential in accordance to the tenets of self-determination;
- I. Right to protection from physical, verbal, sexual, psychological abuse, or punishment;
- J. Right to equal employment opportunity;
- K. Right to fair compensation for labor;
- L. Right to own, rent, or lease property;
- M. Right to marry and have children;

- N. Right to be free from involuntary sterilization;
- O. Right to express human sexuality and receive appropriate training;
- P. Right to consume alcoholic beverages if 21 years of age or older unless contraindicated by orders of his/her primary care provider or the court;
- Q. Right to presumption of legal competency in guardianship proceedings;
- R. Right to be free from unnecessary and excessive medication;
- S. Right to be accorded privacy during treatment and care of personal needs;
- T. Right to confidentiality of information and medical records;
- U. Right of a school age member to receive publicly supported educational services;
- V. Right of a child to receive appropriate supports and services, subject to available appropriations, which do not require the relinquishment or restriction of parental rights or custody, except as prescribed in A.R.S. § 8-533, which describes the grounds needed to justify the termination of the parent-child relationship;
- W. Right to consent to or withhold consent from participation in a research project approved by the Division management team or any other research project; right to knowledge regarding the nature of the research, potential effects of a treatment procedure as part of a research project; right to confidentiality; and the right to withdraw from the research project at any time;
- X. Right of a person who believes his/her, rights have been violated to petition the Superior Court for redress, unless other remedies exist under federal or State laws;
- Y. Right to withdraw from programs, supports and services, unless the member was assigned to the Department by the juvenile court or placed in a secure facility by the guardian and court;
- Z. Right to an administrative review, if in disagreement with a decision made by the Division, by filing a verbal or written request for such with the DDD Office of Compliance and Review, and the right to appeal the decision;
- AA. Right to contact the Human Rights Committee;
- BB. Right to be free from personal and financial exploitation; and,
- CC. The right to have care for personal need provided, except for cases of emergency, by a direct care staff of the gender chosen by the responsible person, this choice shall be specified in the Planning Document.

1001-B RESPONSIBILITIES OF INDIVIDUALS APPLYING FOR AND/OR RECEIVING SUPPORTS AND SERVICES

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Applying for and/or receiving supports and services individuals with developmental disabilities are to be supported in exercising the same rights and choices and afforded the same opportunities enjoyed by other citizens. The Division provides this support by following the principles of self-determination. Self-determination is the ability of a member to make choices that allow him/her to exert control over his/her life and destiny, to reach the goals he/she has set, and take part fully in the world around him/her. To be self-determined requires that a member has the freedom to be in charge of his/her life, choosing where to live, who to spend his/her time with and how to spend his/her time. Decisions made by the member about his/her quality of life shall be without undue influence or interference of others. Self-determination also necessitates that the member has the resources needed to make responsible decisions.

Self-determination is necessary because people who have disabilities often desire greater control of their lives so they can experience the life they envision for themselves, one that is consistent with their own values, preferences, strengths and needs. For individuals receiving services through the Division, one way to exert greater control of their lives is to choose the supports and services they receive and who provides that support. The Division offers many options for a member wanting to make more choices about services and supports, such as:

- A. Selecting a Support Coordinator;
- B. Selecting and directing their planning process, either an Individual Support Plan and/or a Person-Centered Plan;
- C. Selecting service providers, both qualified vendors and individual independent providers;
- D. Hiring, managing, and firing service providers;
- E. Using a fiscal intermediary to manage the financial aspects of having a service provider who is his/her employee; and,
- F. Having the spouse serve as his/her provider.

1001-C RIGHTS OF PERSONS WITH DEVELOPMENTAL DISABILITIES LIVING IN RESIDENTIAL SETTINGS

REVISION DATE: 7/3/2015

EFFECTIVE DATE: July 31, 1993

REFERENCES: A.R.S §§ 23-363; A.A.C. R6-6-901 et seq., R6-6-107; CFR 438.420(a).

Additional rights of persons with developmental disabilities who reside in residential settings such as Group Homes, Adult and Child Developmental Homes, or an Intermediate Care Facility for Individuals with an Intellectual Disability (ICF/IID) include the basic human and disability-related rights listed previously. Because of the special circumstances of living in a residential facility, specific rights have been delineated. These rights include the:

- A. Right to be informed of the rules of the residential setting in which he/she is living;
- B. Right to impartial access to treatment and/or accommodations;
- C. Right to a safe, humane, and clean physical environment;
- D. Right to communicate with those responsible for his/her care;
- E. Right to choose his/her personal care provider from the health plan(s) available;
- F. Right to be informed of his/her medical condition, of any technical procedures that will be performed, of the identity of the persons who will perform the procedures, attendant risks of treatment and the right to refuse treatment;
- G. Right to be free from unnecessary drugs and physical restraints, except as authorized in writing by a physician for a specified time period and in accordance with the Division rules regarding behavior supports;
- H. Right to a physical examination, prompt medical attention, and to adequate food and water;
- I. Right to his/her own bed;
- J. Right to personal clothing and possessions as space permits, unless this infringes on the rights of others or is medically contraindicated;
- K. Right to be accorded privacy with regard to written correspondence, telephone communication, and visitors;
- L. Right of a husband and wife who both reside in a facility to share a room;
- M. Right to privacy during visits by a spouse;
- N. Right to refuse to talk with or see someone;
- O. Right to participate in social, religious, and community group activities;

- P. Right to manage his/her own financial affairs and to be taught to do so to the extent of his/her capabilities;
- Q. Right to refuse to perform services for the facility, but if he/she does provide services, right to be compensated at prevailing wages commensurate within state and federal laws and as prescribed by the Industrial Commission;
- R. Right to have the Division supervisors advised of any unusual incident.
- S. Right to file a grievance not only with the Division but also with his/her health plan, the Arizona Long Term Care System (ALTCS) and Arizona Health Care Cost Containment System (AHCCCS);
- T. Right to the least amount of physical assistance necessary to accomplish a task; and,
- U. Right to have care for personal needs provided, except in cases of emergency, by a direct care staff of the gender chosen by the individual/responsible person. This choice shall be specified in the ISP/IFSP planning document.

1002 VOTER REGISTRATION

REVISION DATE: 7/3/2015

EFFECTIVE DATE: July 31, 1993

All support coordination staff must comply with the Arizona Department of Economic Security Policy DES 1-01-24, regarding the National Voter Registration Act of 1993, and applicable state statutes, by offering individuals applying for services the opportunity to register to vote.

Staff will accept the verification of U.S. Citizenship that the consumer presents, but are NOT required to verify that it is an acceptable U.S. Citizenship document.

Staff will sign the acknowledgement form to indicate they have reviewed and understand the policy. The acknowledgement must be signed by new employees within 60 days of hire. The signed copy is maintained in the Supervisor's file.

1003 DISTRICT HUMAN RIGHTS COMMITTEES

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EFFECTIVE DATE: July 31, 1993

REFERENCES: A.R.S. § 41-3804.

Human Rights Committees are local groups of citizens who provide independent oversight in matters related to the rights of persons with developmental disabilities who are served by the Division. Each Human Rights Committee must meet at least six times each calendar year, but as often as necessary as determined by the chair in accordance with the bylaws of the committee.

Specifically, the Human Rights Committee reviews the rights of individuals in the following areas:

- A. Administration either of medication, which changes recipient's behavior directly, or as a side effect;
- B. Aversive or intrusive programs;
- C. Research proposals in the field of developmental disabilities, which directly involve individuals receiving supports and services; and,
- D. Incidents of possible abuse, neglect, or violations of an individual's rights.

Any suspected violation of the rights of a person with developmental disabilities should be identified to the appropriate Human Rights Committee.

In addition to protecting the rights of individuals, the Human Rights Committee must:

- A. Submit in writing to the Division Assistant Director any objections it has to actions by employees of the Division or employees of service providers.
- B. Issue an annual report, in concert with the Quality Assurance Unit, summarizing its activities and making recommendations of changes it believes the Division should consider implementing.

There are several Human Rights Committees in the state, each serving one or more counties. For further information on the Human Rights Committee in your area, contact your District Administrative Office.

Membership in Human Rights Committees

Membership in a Human Rights Committee shall occur utilizing the following process:

- A. Candidates for initial membership on a newly developed committee shall be recruited by the District Program Manager/Administrator with input and advice from the local chapter of The Arc, Developmental Disabilities Advisory Council and any other appropriate local advocacy organizations. The director of the Department of Economic Security (DES) shall appoint committee members from the list of

candidates recruited locally.

- B. Each committee shall be comprised of at least seven (7) and not more than fifteen (15) persons with expertise in one or more of the following areas:
 - 1. Psychology;
 - 2. Law;
 - 3. Medicine;
 - 4. Education;
 - 5. Special education; and, or,
 - 6. Parents of individuals with developmental disabilities.
- C. No employee of the DES or of a service provider, which is associated with an existing Human Rights Committee, may be a voting member of a committee.
- D. When there is a vacancy in an existing committee's membership, nominees may be presented to the committee by advocacy groups, committee members or the District Program Manager/Lieutenant Program Manager. Upon recommendation by the committee by majority vote, the DES Director shall appoint a person to fill the vacancy.

1004-A INFORMED CONSENT

REVISION DATE: 7/3/2015

EFFECTIVE DATE: July 31, 1993

REFERENCES: A.R.S. § 36-551 (15) and 36-561.

As one means of protecting the rights of consumers, the Division requires written consent from the individual/responsible person for release of confidential information. Consents may also be required for participation in events, medical treatments, and activities. A.R.S. § 36-551 (15) defines consent as voluntary informed consent. Consent is voluntary if not given as the result of coercion or undue influence.

Consent is informed if the person giving the consent has been informed of and comprehends the nature, purpose, consequences, risks, and benefits of the alternatives to the procedure; and, has been informed and comprehends that withholding or withdrawal of consent will not prejudice the future provision of care and supports and services to the individual. In case of unusual or hazardous treatment procedures performed pursuant to A.R.S. § 36-561, subsection A, experimental research, organ transplantation and non-therapeutic surgery, consent is informed if, in addition to the foregoing, the individual/responsible person giving the consent has been informed of and comprehends the method to be used in the proposed procedure.

All consents must be time or event-limited. Consent may be withdrawn at any time by giving written notification to the individual's Support Coordinator.

Consumer's Competency Questioned

When a consumer's ability to make decisions about medical treatment/ procedures is questioned, the matter must be forwarded to the Division's Medical Director for consideration.

1004-B CONSENT TO MEDICAL TREATMENT OF MINORS, INCAPACITATED MINORS, OR INCAPACITATED ADULTS

REVISION DATE: 9/30/2016, 7/3/2015, 5/1/2014

EFFECTIVE DATE: July 31, 1993

REFERENCES: A.R.S. §§ 14-5101, 14-5104, 14-5207, 14-5209, 14-5310, 14-5312, 14-5503, 14-5602 14-5602, 36-2271, 36-3231, 44-133.

Consent to Medical Treatment of Minors

Generally, the parent or guardian of a minor must provide written consent for medical treatment, however, Arizona law allows other individuals to provide consent to medical treatment of a minor when a parent or guardian is unavailable.

- A. A member may consent to the medical treatment of a minor if the member has a properly executed power of attorney from the minor's parent or guardian delegating the power to consent to medical treatment. The delegation of power may be for not more than six (6) months.
- B. If time allows, a temporary guardian may be appointed by the court to consent to medical treatment, but the authority of the temporary guardian is limited to six (6) months. Where no one is available to act as a temporary guardian, a public fiduciary may be appointed by the court.
- C. In cases of emergency, where a parent or guardian cannot be located after reasonably diligent efforts, consent may be given by a person standing *in loco parentis* to the minor. *In loco parentis* means a person who takes the parent's place by undertaking temporary care and control of a minor in the absence of a parent. For example, this might be a person who is a relative, caregiver, or teacher of the minor.
- D. If no one can be located who stands in *loco parentis* to the minor, a physician can determine that an emergency exists, and that a parent or guardian cannot be located or contacted after reasonable diligent effort. The physician can then perform a surgical procedure on the minor if necessary to treat a serious disease, injury, drug abuse, or to save the life of the minor.
- E. As a general rule, the Division Support Coordinators cannot sign a medical consent for treatment of minors except for children in foster care.

Consent to Medical Treatment of Incapacitated Minors

The general rule is that the parent or guardian of a minor must provide written consent for medical treatment, however, Arizona law allows other individuals to provide consent to medical treatment of a minor when a parent or guardian is unavailable.

- A. A member may consent to the medical treatment of a minor if the member has a properly executed power of attorney from the minor's parent or guardian delegating the power to consent to medical treatment. The delegation of power may be for not more than six (6) months.

- B. If time allows, a temporary guardian may be appointed by the court to consent to medical treatment, but the authority of the temporary guardian is limited to six (6) months. Where no one is available to act as a temporary guardian, a public fiduciary may be appointed by the court.
- C. In cases of emergency, where a parent or guardian cannot be located after reasonably diligent efforts, consent may be given by a person standing in *loco parentis* to the minor. In *loco parentis* means a person who takes the parent's place by undertaking temporary care and control of a minor in the absence of a parent. For example, this might be a person who is a relative, caregiver, or teacher of the minor.
- D. If no one can be located who stands in *loco parentis* to the minor, a physician can determine that an emergency exists, and that a parent or guardian cannot be located or contacted after reasonable diligent effort. The physician can then perform a surgical procedure on the minor if necessary to treat a serious disease, injury, drug abuse, or to save the life of the minor.
- E. As a general rule, the Division Support Coordinators cannot sign a medical consent for treatment of minors except for children in foster care.

Consent to Medical Treatment of Incapacitated Adults

An adult cannot consent to medical treatment if he/she lacks the understanding or capacity to make or communicate responsible decisions. One of the duties of a guardian is to make reasonable efforts to secure medical services for a member of the Division who is his/her ward. If a permanent guardian is unavailable (due to death, resignation, etc.), Arizona law allows other identified individuals to sign the consent for medical treatment of an incapacitated adult.

- A. A.R.S. § 36-3231 defines surrogate decision makers priorities and limitations. In the following order of priority, these individuals may act as a surrogate to sign the consent for medical treatment of an incapacitated adult when no guardian is available.
 - 1. The spouse of the incapacitated adult;
 - 2. An adult child;
 - 3. A parent;
 - 4. A domestic partner (assuming the Member is not married and no other person has a financial responsibility for the individual);
 - 5. A brother or sister;
 - 6. A close friend. A close friend means an adult who has shown special care and concern for the individual, who is familiar with the individual's health care views and desires, and who is willing and able to become involved and act in the individual's best interest; and,
 - 7. A health care provider is required to make a reasonable effort to locate and

follow a health care directive. A health care provider shall also make reasonable efforts to locate the above designated individuals. In order to assist the reasonable efforts of health care providers, the Division Support Coordinators should have available, at all times, a complete list of the names, addresses, and phone numbers of these designated individuals who may be contacted for purposes of signing a consent for medical treatment. A copy of the list may be provided to treating medical personnel, as necessary, to assist them in locating a person authorized to sign the consent for medical treatment if a guardian is unavailable. If none of these persons is available, the appointment of a public fiduciary by the court may be requested.

- B. A guardian has authority to execute the consent. If the guardian has executed a health care power of attorney that authorizes another person to make health care decisions on behalf of the incapacitated person, the person named in that power of attorney has authority to execute the consent. The power of attorney is valid for not more than 6 months.
- C. In an emergency, if time allows, a temporary guardian may be appointed by the court to sign a consent for medical treatment or the court may immediately exercise the power to consent to medical treatment prior to notice and hearing. If no one is available to serve as a temporary guardian, the court may appoint a public fiduciary.
- D. When an immediate, life threatening emergency exists and there is neither time to get to court nor time to contact the individuals who may lawfully sign a consent, an attending physician, after consultation with a second physician, may make the health care treatment decision without a signed consent.
- E. The Division Support Coordinators cannot sign a medical consent for treatment of incapacitated adults.
- F. A surrogate may make decisions about mental health care treatment on behalf of a patient if the patient is found incapable. However, a surrogate who is not the patient's agent or guardian shall not make decisions to admit the patient to a level one behavioral health facility licensed by the department of health services, except as provided in subsection E of this section or section 14-5312.01, 14-5312.02 or 36-3231. Subsection E: If the admitting officer for a mental health care provider has reasonable cause to believe after examination that the patient is incapable as defined in section 36-3231, subsection D and is likely to suffer serious physical harm or serious illness or to inflict serious physical harm on another person without immediate hospitalization, the patient may be admitted for inpatient treatment in a level one behavioral health facility based on informed consent given by any surrogate identified in subsection A of this section. The patient shall be discharged if a petition for court ordered evaluation or for temporary guardianship, requesting authority for the guardian to consent to admission to a level one behavioral health facility has not been filed within forty-eight hours of admission or on the following court day if the forty-eight hours expires on a weekend or holiday. The discharge requirement prescribed in this section does not apply if the patient has given informed consent to voluntary treatment or if a mental health care provider is prohibited from discharging the patient under federal law.

1005-A GUARDIANSHIP AND CONSERVATORSHIP OR SURROGATE PARENT

REVISION DATE: 9/30/2016, 9/1/2014

EFFECTIVE DATE: July 31, 1993

REFERENCES: A.R.S. §§ 15-761, 15-763, et seq.; 36-551 (01)(H), 36-551(17), 36-564(D), 14.5101, et seq.; 14-5105, 14-5311, 14-5303-5304, 14-5310; 14-5401, 14-5312; 14-5408(C); 14-5315; A.A.C. R6-6-1401. Public Law 105-17.

REFERENCES: A.R.S. §§

Guardianship is a legal method that is used to insure that a person who is unable to make reasoned decisions has someone specifically assigned to make decisions on his/her behalf. A guardian must be appointed by a court. A conservator refers to a person appointed by a court to manage the estate of a protected person. A person may have a guardian, a conservator or both appointed by the court.

Guardianship or conservatorship for persons with developmental disabilities shall be:

- A. Utilized only as is necessary to promote the well-being of the individual;
- B. Designed to encourage the development of maximum self-reliance and independence in the individual; and,
- C. Ordered only to the extent necessitated by the individual's actual mental, physical and adaptive limitations.

Appointment of a Guardian or Conservator

Only a court can determine that someone needs a guardian. Neither the family nor a Support Coordinator can unilaterally or jointly make that determination. However, the individual himself/herself, a family member, or any person interested in his/her welfare may petition the court (file a request for a hearing in a State court) for a finding of incapacity and the consequent appointment of a guardian. The court will appoint an attorney to represent the allegedly incapacitated person in the hearing unless the individual has his/her own attorney.

It should be noted that under Arizona law, a person with a developmental disability is presumed legally competent in guardianship proceedings until the court makes a determination to the contrary.

The person alleged to be incapacitated shall be interviewed by a person appointed by the court (called a court visitor) and examined by a court appointed physician, psychologist, or a registered nurse who will submit written reports to the court. In addition, the court visitor shall interview the person seeking appointment as guardian, and visit the home of both the individual and the proposed guardian.

During the hearing, the individual who is the subject of the hearing, has the right to be represented by an attorney, to be present at the hearing, to see or hear all evidence, to present evidence, to cross-examine witnesses, and to trial by jury. If the individual alleged to be incapacitated or his/her counsel requests, the issue may be determined at a closed

hearing.

Before a guardian can be appointed, the court must be satisfied "by clear and convincing evidence" that the appointment of a guardian or conservator is necessary to provide for the demonstrated needs of the individual.

In case of an emergency situation, the court can appoint a temporary guardian and/or a temporary conservator.

If the appointment of a guardian or conservator is required for a American Indian who is a member of an Indian Tribe and who has significant contacts with that tribe, but who is not an Indian child within the scope of federal law, the Arizona Administrative Code requires that the appointment of a guardian or conservator shall first be requested through the appropriate tribal court, if any, unless the request through the tribal court is not in the recipient's best interests as determined by the Individual Support Plan (ISP) team.

Who May be Guardian

Any competent person may be appointed guardian by the Court. Persons who are not disqualified have priority for appointment as guardian in the following order:

- A. Spouse;
- B. Individual or corporation nominated by the person, if in the opinion of the court, the person has sufficient mental capacity to make an intelligent choice for guardian;
- C. An adult child;
- D. A parent, including a person nominated by will or other writing signed by a deceased parent;
- E. A relative with whom the individual has resided for more than six months prior to the filing of the petition;
- F. The nominee of a person who is caring for the person or paying benefits to him/her; or,
- G. A public or private fiduciary, professional guardian, conservator.

The court may give preference for the appointment of a family member unless this is contrary to the expressed wishes of the individual or is not in his/her best interest as determined by the court.

Persons who wish to be considered for appointment as a temporary or permanent guardian or conservator must provide the court with all required information. Specifically, the proposed guardian must disclose any interest in any enterprise providing health care or comfort care services to any individual.

Duties of a Guardian

A guardian's duties include, but are not limited to:

- A. Encouraging the individual to develop maximum self-reliance and independence;
- B. Working toward limiting or terminating the guardianship and seeking alternatives to guardianship;
- C. Finding the most appropriate and least restrictive setting for the individual consistent with his/her needs, capabilities and financial ability;
- D. Making reasonable efforts to secure medical, psychological, and social services for the individual;
- E. Making reasonable efforts to secure appropriate training, education, and social and vocational opportunities for the individual;
- F. Taking care of his/her ward's clothing, furniture, vehicles, and other personal effects;
- G. Giving consents or approvals for medical or other professional care that may be necessary; and,
- H. Completing all reports required by the court.

To encourage the self-reliance and independence of the individual (the ward), the court may grant him/her the right to handle part of his/her money or property without the consent or supervision of a conservator. This may include allowing the individual to maintain appropriate accounts in a bank or other financial institution.

Procedures

As part of the annual review, the ISP team shall evaluate the possible need for a guardian and/or conservator for an individual receiving services through DES/DDD. This information must be noted on the ISP form DD-217 - 2 (Team Assessment Summary, cont) under guardianship status.

When there is serious doubt regarding the ability of the individual applying for services or receiving services to make or communicate responsible decisions, every effort must be made to have a judicial determination made regarding the need for guardianship and/or conservatorship.

In the case of minor child where there is no parent or interested party who is willing and able to serve as guardian, the Support Coordinator should refer the child to Department of Child Safety (DCS).

If an individual is 18 years of age or older, the parents are not the guardians unless they have been so appointed by the court. Thus, parents cannot continue to sign medical consent forms, etc. for their children who have become of legal age. The parents may wish to pursue guardianship status.

If the Support Coordinator and/or the ISP team believes that a determination of legal competency should be pursued, the Support Coordinator should:

- A. Explain the need to the individual and/or family;
- B. Work with the individual/and or family to help them understand the process necessary for obtaining a guardian and/or a conservator;
- C. Refer the individual and/or family for help, if it is needed, in securing an attorney to handle the proceedings; (referrals, for example, to: Arizona Center for Law in the Public Interest, Community Legal Services, The Arc);
- D. If the individual/family is unwilling or unable to seek guardianship, the Support Coordinator must pursue guardianship by:
 1. Writing a letter to the county public fiduciary where the individual receives services explaining the situation; and/or
 2. Contacting Adult Protective Service (APS) for assistance.

Surrogate Parent

Parental involvement in the planning of a child's Individual Education Plan (IEP) is a federal requirement. For a child who is without a parent willing/able to participate in the child's educational process, federal and State laws provide for the appointment, by the court, of a surrogate parent to represent a child in decisions regarding special education.

A petition for a surrogate parent for a child with disabilities may be made if any of the three following conditions have been met:

- A. No parent can be identified;
- B. A public agency cannot determine the whereabouts of a parent after having made three reasonable attempts; or,
- C. The child is a ward of the State and the biological parent is unwilling or unable to consent to special education placement.

A person who is an employee of a State agency which is involved in the education or care of the child is not eligible to be a surrogate parent. Thus, a Department of Economic Security (DES)/Division of Developmental Disabilities (DDD) Support Coordinator cannot be a surrogate parent. Moreover, a DES/DDD Support Coordinator cannot sign an authorization for a special education evaluation or an authorization for services for a child who has a developmental disability.

Procedures

If a child who is receiving services through DES/DDD has a surrogate parent, this information must be noted on the Individual Support Plan (ISP) form *DD-217 - 2 Team*

Assessment Summary, continued under guardianship status and reviewed annually. In addition, the surrogate parent must be part of the ISP team.

A foster parent who wants to be a surrogate parent should work with the Support Coordinator in making a request to the courts. While a foster parent may petition the court to receive an appointment as a surrogate parent, the court is responsible for determining whether a particular individual is able to act as a foster parent, and also represent the best interest of the child as a surrogate parent.

If the Support Coordinator believes a surrogate parent is necessary, e.g., the natural parents have relinquished their rights, the Support Coordinator should seek to have a surrogate parent appointed so that decisions regarding the child's education can be made in a timely manner.

The Arizona Department of Education (ADE) has information regarding surrogate parents and usually has a list of persons who have volunteered to be surrogate parents and have already received the required training.