

PETITION GUIDELINES & BEST PRACTICE RECOMMENDATIONS

Purpose: *To provide a framework to consider prior to filing for Guardianship or Conservatorship. The framework is to ensure less restrictive alternatives have been considered, and to provide a more unified approach, in consideration of national best practices, across the state when these legal options are being considered. These principles are consistent with the promotion of justice for vulnerable adults.*

- Documentation of significant cognitive impairment exists; **AND**
- Medical records when they are available¹ demonstrate impaired capacity² and an inability to make a reasonable decision about the specific consent needed for protection and there is a physician or psychologist statement in support of guardianship/conservatorship; **AND**
- The person is unable to understand the consequences resulting from their decisions or inaction; **AND**
- No less restrictive measures can meet the need. Able to outline specific options that were explored and why they cannot meet the individual's needs; **AND**
- Attempts have been made to locate family or other supports and provide education about the person's needs, support and encouragement on the role of family in protection as an informal support and/or a legal surrogate; **AND**
- Family/friend support does not exist to meet the person's needs. No family/friends are available, or family members/friends are not involved or cannot be engaged to participate or make decisions that will keep the individual from harm: **OR**
- Services are currently being provided but are not protecting the individual; **OR**
- Adult Protection is considering a guardian/conservator petition, there is a substantiated³ vulnerable adult finding of: self-neglect, caregiver abuse/neglect or financial exploitation; **AND**
- Needs are not being met: Physical health issues not addressed, bills not being paid and services being discontinued, etc.; **AND**

¹ MN Statute 626.55 7 Subd. 9b: "The lead investigative agency has the right to enter facilities and inspect and copy records as part of investigation. The lead investigative agency has access to not public data, and medical records that are maintained by facilities to the extent necessary to conduct its investigation."

² MN Statute 524.5-102 Subd. 6: "Incapacitated person means an individual who, for reasons other than being a minor, is impaired to the extent of lacking sufficient understanding or capacity to make or communicate responsible personal decisions, and who has demonstrated deficits in behavior which evidence an inability to meet personal needs for medical care, nutrition, clothing, shelter, or safety, even with appropriate technological assistance."

³ MN Statute 626.557 Subd. 18: "Substantiated means a preponderance of the evidence shows that an act that meets the definition of maltreatment occurred."

This document has been created and adopted by the Center Partners, an interdisciplinary professional working group coordinated by the Minnesota Elder Justice Center.

- The person's needs cannot be met in any other way than guardianship or conservatorship; **AND**
- The person's health or basic needs are at imminent danger, or decisions about medical treatment, residence, and/or finances must be made; **AND**
- Less restrictive options have been explored, and cannot meet the need; i.e. Case management (waiver, private pay, county), informal assistance from family or friends, POA, representative payee, waiver services, health care directive, civil commitment, authorized representative, advocacy, legal counsel for the vulnerable adult or family; **AND**
- There is a specific consent or decision requiring the authority of a guardian; **AND**
- The needs of the individual are continuous or limited guardian powers have been designated **AND**
- The purpose of the guardianship/conservatorship is to meet the needs of the person, not to reduce liability for providers or ease the work of other professionals; **AND**
- The potential benefit of the guardian/conservatorship outweighs the cost and the potential harm to the person financially, emotionally, socially.