Guardianship is a restrictive intervention that removes some of a person’s rights. Therefore, presume guardianship is not needed until all less restrictive options are exhausted and documented.

For the person’s communication abilities in order to explain and clarify to the person the required decision that needs to be made, the person’s advocate and communicate in a way the person can understand the issue and context, including providing the person options regarding the decision and explaining the consequences associated with each option.

1. Why is surrogate being requested? What need does the person have that is the root cause for the guardianship request?
   **Move forward if a specific need for guardianship is identified.**

2. What specific decision is being requested requiring a guardian? What decision needs to be made?
   **Move forward if the specific decision requiring a guardian is identified.**

3. Can the person communicate a preference about the decision that needs to be made?
   **NOT able to communicate preference**

4. Is there evidence that the person has unmet basic needs in regards to the identified decision? (food, shelter, clothing, health care, supervision)
   **Yes**

5. Is the decision based on need for an Emergency Medical treatment decision?
   **Proceed with medical provider to implement non-guardianship options such as:**
   - Health Care Bill of Rights 144.65110
   - Refer to Provider’s own institutional policy for treatment when no surrogate
   - Principle of implied consent for emergency medical treatment
   - AMA Code of Ethics 2.11
   - Minnesota Medical Association
   - Ethics Committee for treatment recommendation

6. Is the person more likely than not to experience serious harm in the next 15-90 days associated with the decision?
   **Yes**

7. Is the decision within the scope of the power and authority granted by the court to a guardian to make?
   **Yes**

8. Does the decision in question need to be made within the next 14 days?
   **Yes**

9. Is a surrogate required to address the identified decision?
   **Yes**

10. Can the person name a surrogate? If unable, can a surrogate be identified? (Expend diligent effort to locate surrogate if unable, can a surrogate be identified?)
    **Yes**

11. Does assessment identify ability to make informed decision about need in question?
    **Yes**

12. Is the request for guardianship for the benefit of the person who would have a guardian? What is the benefit for them? Is the benefit consistent with the person’s expressed wishes?
    **Yes to All**

13. Will the person’s lack of cooperation with a guardian’s decision result in the decision not being able to be implemented? (Ex: physically resist medication, services, etc.)
    **Yes**

14. Is there an agency or individual able to bring a petition to the court? Can the petitioner find legal representation to file the petition and appear in court? Is there a guardian willing to serve?
    **Yes to all**

Options DO NOT result in a treatment decision

- Guardianship is no longer appropriate if the root cause of guardianship request was Emergency Medical treatment.
- Guardianship will not adequately resolve the identified issue.
- If no serious harm is likely in the next 15-90 days, wait or monitor depending on your role.

Options DO result in a treatment decision

- Guardianship is not appropriate if there are no unmet needs.
- Guardianship takes weeks to months.
- Consider other, less restrictive options.
- Facilitate needed referrals to legitimize surrogate within your role/scope.
- Guardianship is not appropriate when the person has a capacity and communicates preference about decision.
- Guardianship should never be for convenience of others, to resolve provider liability concerns, or speed of payment without impact on a person’s services.
- Guardianship is not appropriate if a specific decision cannot be identified requiring a guardian.
- Guardianship is not appropriate if the person can communicate a preference about the decision.
- Guardianship is not appropriate when the person has unmet basic needs.
- Guardian lacks authority to meet goal. Guardians can not violate rights outside cause for the guardianship request.

Before pursuing guardianship, be sure to identify the specific need of the person that is the root cause for the guardianship request.

For more information, refer to WINGS 360 Field Guide to Ethics and Surrogacy.