

The Role of Adult Protection in Guardianship

**Best Practice Care
Coordination Conference**

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Outline

- **Overview:**

Guardianship/Conservatorship

- **Role of a Guardian/Conservator**
- **Less Restrictive Alternatives**
- **Duty/Role of Adult Protection**
- **Role of Care Coordinators**
- **Ethical Conflicts**
- **Case Examples**

Overview:

“Get a Guardian”

- **Impaired capacity/Diagnosis**
- **No legal surrogate**
- **Lacks support system**
- **Refusing services**
- **Perception of risk to the person**
- **Concerns of provider liability**

Overview: Guardianship Considerations

- **What is the issue?**
- **What is goal?**
- **What is needed to accomplish the goal?**
- **What is my role?**

Overview: Definitions

- **Guardian-** person who acts under court order/appointment for personal decisions
- **Ward-** person with a guardian
- **Guardianship-** the legal arrangement

Definitions: cont'd

- **Conservator- person who acts under court orders/appointment for financial management/decisions**
- **Protected Person- person with a conservator**
- **Conservatorship- the legal arrangement**

Definitions cont'd

- **Public Guardian-Commissioner
DHS is guardian for person with
developmental disability**

Minnesota Chapter Law 252A

Guardianship:

Standard for Appointment

Incapacity: Lacks sufficient understanding 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.

Guardianship: Standard for Appointment

- **Incapacity; diagnosis**
- **Behavioral evidence of inability to meet needs**

And

- **No less restrictive alternative available to meet identified needs**

524.5-310

Standard for Appointment: Conservatorship

- **Unable to manage property and business affairs even with technological support**
- **Property will be wasted or dissipated without management, or**
- **Money is needed support, care, education, health or welfare**

Role of the Guardian/Conservator

**Limited to the powers listed in the
court order of appointment.**

Role:

Powers of a Guardian

- **Power to have custody of ward and establish place of abode**
- **Duty to provide for ward's care, comfort and maintenance needs; food, clothing, shelter, health, social and recreational requirements**

Guardian Powers #2

- **Take reasonable care of clothing, furniture, vehicles and other personal effects**
- **Consent to medical and other professional care, counsel, treatment or service; Exceptions**
- **Withhold or approve contracts***

Guardian Powers #3

- **Apply for benefits***
- **Power to exercise supervisory authority only to extent necessary to provide needed care and services**

***if no conservator**

524.5-313

Guardian Order of Appointment:

- **Current guardian**
- **Health Care Agent**
- **Spouse/ Appointment in will**
- **Adult Child**
- **Parent**
- **Adult resided with 6 months**
- **Relative**
- **Professional**

524.5-309

Role:

Conservator Powers

- **Pay reasonable charge for support, maintenance and education of protected person**
- **Pay just and lawful debts for protected person, spouse, dependents**
- **Possess and manage the estate, collect debts and claims**

Powers of Conservator cont'd

- **Sell real estate with further court order**
- **Transaction set aside within 2 years prior**
- **Withhold or approve contracts**
- **Apply for benefits**
- **Revoke or suspend a Power of Attorney**

524.5-417

Conservator Order of Appointment

- **Current Conservator/delegate**
 - **Power of Attorney**
 - **Spouse/delegate**
 - **Adult child/delegate**
 - **Parent/delegate**
 - **Adult resided 6 month**
 - **Relative**
 - **Professional**
- 524.5-413**

Rights of Wards and Protected Persons

Include:

- **Consideration of current and prior states preferences**
- **Control all aspects of life not specifically delegated by the Court**
- **Petition court for change abode**

524.5-120

Rights #2

- **Notice and right to object to disposition of personal property**
- **Personal privacy**
- **Communication and visitation with person's of choice with restriction only to extent necessary to prevent harm**

Rights #3

- **Marry and procreate**
- **Vote, unless restricted by the court**
- **Petition for termination or modification of court order**
- **Be represented by an attorney**

A Quote to Consider

“Guardianship or conservatorship should only be sought if the individual's judgment or decision making is a major threat to the individual's welfare.”

“Conservatorship And Guardianship In Minnesota”, Minnesota Conference of Chief Judges Pending, 2003; Amended 2009, 2010, 2013

Process for appointment

- **Petitioner: Any interested person**
- **Petition: Document filed**
- **Due Process: Notice to person and Interested Parties defined under statute, Legal Representation, Attend hearing**
- **Standard: Clear and Convincing Evidence**

Guardianship/ Conservatorship Expense:

Court can order:

- **From the estate/money/assets of the protected person/ward**
- **County having jurisdiction**
- **Petitioner, guardian, conservator not acting in “good faith”**

Guardianship/ Conservatorship Expense cont'd

**If Guardian or Conservator
nominated by court or county
adult protection:**

- **Because no friend or relative
available to serve**
- **Necessary to prevent
maltreatment under 626.5572**
- **County fee schedule considered**

Guardian/Conservator Expense cont'd

- **County may be reimbursed from person's estate when a county employee serves when county makes diligent effort to find an independent guardian/conservator**

524.5-502

County Guardianship Screening Committee:

The county social service agency may create a screening committee:

- **Review petitions involving an indigent person**
- **Knowledge of less restrictive alternatives**
- **Court shall make its decision after the screening committee has reviewed the petition**
- **Court may appoint a guardian under county contract**

524.5-304

Less Restrictive Alternatives: Guardianship

- Impaired capacity, but needs are met
- Care Coordination/
Case Management
- Family/Caregiver
- Health Care Directive
- Provider Policy
- Ethics Committee
- Authorized Representative
- Protective Order

Less Restrictive Alternatives: Conservatorship

- **Unable to manage finances, but needs are met**
- **Family/Trusted Person**
- **Power of Attorney**
- **Trust**
- **Representative Payee**
- **Authorized Representative**
- **Protective Arrangement**

Considerations Before Petition:

- **Is guardianship or conservatorship the only way to accomplish the goal?**
- **What less restrictive alternatives could be implemented?**

Considerations #2

- **Who will petition? Sign paperwork, prove petition**
- **Who will serve?**
- **Who will pay for process filing fees, attorney(s)?**
- **Who will pay for ongoing guardian/conservator, attorney fees?**

Considerations #3

- **Who will provide evidence and testimony?**
- **Time for process varies. May take up to many months.**

Duty of County: CEP

- **Common Entry Point (CEP): 24/7 receipt of reports of suspected maltreatment of a vulnerable adult by mandated and voluntary reporters**

***CEP operation moving to DHS**

7-1-14 626.557 Subd. 9

Duty of County: CEP cont'd

- **Record all reports**
- **Determine need for emergency protective services**
- **Refer to law enforcement if a crime is alleged**
- **Refer reports of suspicious death to the Ombudsman/Medical Examiner**
- **Refer each report to the appropriate lead investigative agency responsible**

Duty of County: Report Response

- **Use a Structured Decision Making Tool provided by DHS to assess CEP reports for services and investigation**
- **Develop guidelines for prioritizing reports for investigation**

Duty of County CEP

Report Response: Dual

- Offer emergency and continuing protective services to prevent further abuse and safeguard the welfare of a VA
- As one of 3 Lead Investigative Agencies/LIA's (county, MDH, DHS) responsible to investigate allegations in the report

Duty of the County Protective Services:

- **Suspected sexual abuse;
arrange for medical examination
and treatment**
- **When necessary to protect from
further harm, seek authority to
remove the vulnerable adult**

Duty of the County: Protective Services

When necessary to protect a vulnerable adult from serious harm:

- **Review records**
- **Restraining order**
- **Appointment or replacement of a guardian/conservator**
- **Referral to a prosecuting attorney**

Duty of the County cont'd

- **Determine if other VA's are at risk of maltreatment, offer services**

626.557 Subd. 10

Duty of County as LIA

- **Interview alleged victim**
- **Interview of the reporter and others**
- **Interview alleged perpetrator**
- **Examination of the environment**
- **Review of pertinent documentation**
- **Consultation with professionals**

626.557 Subd. 10b.

Role of the County: Adult Protection Teams

- **Counties may establish multidisciplinary AP Teams: county agencies, law enforcement, county attorney, tribes, human services, mental health, health care, adult advocates**

Adult Protection Teams cont'd

Duties:

- **Education**
- **Resources for prevention and intervention**
- **Case Consultation/Case Review**

626.5571

Role of the Care Coordinator:

- **Assess needs: Surrogate or advanced directive, social support, care or services to prevent maltreatment**
- **Develop Plan to meet assessed needs: address barriers, develop support network**

Role of the Care Coordinator #2

- **Assist in accessing care, services and information**
- **Advance Directive Planning**
- **Assist in accessing financial assistance**
- **Refer to specialists for evaluation: diagnosis, capacity, functional needs**

Role of the Care Coordinator #3

- **Referral for advocacy, support or education resources**
- **Educate on behaviors which put at risk for maltreatment**

Role of the Care Coordinator #4

- **Refer resources; legal, therapist, behavioral, gambling, chemical dependency, caregiver education or support, mediation**
- **Assist and support enrollee during process if guardian/conservator is required**

Role of the Care Coordinator #5

- **Report suspected maltreatment; abuse, neglect (self or caregiver), financial exploitation to CEP**
- **Coordinate with Adult Protection**

2014 Model MSHO/MSC+ Contract

National Adult Protective Services (NAPSA); Code of Ethics

Practice Guidelines

- **Focus on case planning that maximizes the vulnerable adult's independence and choice to the extent possible based on the adult's capacity.**

NAPSA Ethics, Practice Guidelines Cont'd.

- **Honor the right of adults to receive information about their choices and options in a form or manner that they can understand.**

NAPSA Ethics, Practice Guidelines

- **Use the least restrictive services first whenever possible—community-based services rather than institutionally-based services.**
- **Use family and informal support systems first as long as this is in the best interest of the adult.**

NAPSA Ethics, Practice Guidelines Cont'd

- **In the absence of an adult's expressed wishes, support casework actions that are in the adult's best interest.**
- **Use substituted judgment in case planning when historical knowledge of the adult's values is available.**

NAPSA Practice Guidelines Cont'd.

- **Do no harm. Inadequate or inappropriate intervention may be worse than no intervention.**

www.napsa-now.org/about-napsa/code-of-ethics

Ethical Conflicts

- **Protection vs. Self Determination**
- **Benefit vs. Harm; Guardianship and Alternatives**
financial burden, quality of life, emotional impact, impact on family/social relationships

Ethical Questions

- **Who benefits from guardianship? Client, family, provider**
- **What is the least restrictive intervention?**
- **Will a guardian have the authority or resources to solve the identified need?**

Case Examples:

- **Person with impaired capacity**
- **Person with capacity, petition filed**
- **Person with chemical dependency/hoarding**
- **Person with Guardian, wants new guardian/restoration of rights**

Resources

- minnesotaguardianship.org
- mncourts.gov/selfhelp
- lawhelpmn.org
- www.ag.state.mn.us/Consumer/Seniors/Probate
- www.guardianship.org

Minnesota Adult Protective Services Unit

- **E-mail**

DHS.AdultProtection@state.mn.us

- **Phone: 651-431-2609**
- **Report Suspected Maltreatment**

<http://mn.gov/dhs/>

- **Mandated Reporter
Training****<http://registrations.dhs.state.mn.us/WebManRpt/>**