

Minnesota Elder Justice Center

Public Policy and Elder Justice

THURSDAY JUNE 18, 2020

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Webinar Overview

- 60 minute webinar - 10-15 Minutes for Questions at the End
- Please type questions in the Q & A Box
- This is a follow-up to the May 20 Webinar
- 1 Credit of CLE applied for

Overview of Issues

- Updates on MN Special Session
- Review of 2020 Guardianship Modernization Law
- Review of 2020 Financial Exploitation Reporting Law

2020 Special Session

- Started on Friday, June 12
- Criminal Justice/Police reform taking center stage
- Public reports that Senate will adjourn on June 19 (tomorrow). Governor has publically said he can bring legislature back into session on Saturday, June 20.
- More lawmaking throughout the summer? (bonding bill, outstanding COVID issues – especially in long term care facilities)

Changes to Guardianship and Conservatorship

HF 3391 Moller (DFL) | SF 3258 Ingebrigtsen (R)

Unanimous votes in both the House and Senate

Signed into law as part of a civil law package of bills in [SF 3357](#) (Article 1).

Changes to Guardianship and Conservatorship

What prompted the changes?

- Overuse of Guardianship and Conservatorships
- Lack of analysis about less restrictive alternatives
- Not enough resources and education for less restrictive alternatives

Key Parts of Modernization

- Reduce unnecessary guardianships
 - Ensures less restrictive alternatives are better analyzed
 - Time-limited guardianships created/clarified
- Better protect rights of persons under guardianship
 - Bill of Rights Changes
 - Better privacy protections in guardianship proceedings
 - Emergency guardianship clarified
 - Higher threshold for restricting contact with others

Changes to Definitions

Incapacitated person. "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~~ is unable to meet personal needs for medical care, nutrition, clothing, shelter, or safety, even with appropriate technological and supported decision making assistance.

Changes to Definitions

Supported decision making. "Supported decision making" means assistance from one or more persons of an individual's choosing in understanding the nature and consequences of potential personal and financial decisions which enables the individual to make the decisions and, when consistent with the individual's wishes, in communicating a decision once made.

Key parts of modernization

- Supportive Decision making
 - Adds a definition
 - Includes less restrictive alternatives in the definition of incapacity
 - Requires petition and order to specifically state what least restrictive alternatives were tried



Proposed Changes to Petition and Order

524.5-303 revised to include...

The petition must state:

what less restrictive means have been attempted and considered, how long such less restrictive means have been attempted, and a description of why such less restrictive means are not sufficient to meet the respondent's identified needs;

524.5-310 (a)(2) revised to say...

The court must find:

the respondent's identified needs cannot be met by less restrictive means, including but not limited to use of appropriate technological assistance, supported decision making, community or residential services, or appointment of a health care agent under section 145C.01, subdivision 2. The court must make specific findings particular to the respondent why less restrictive alternatives do not work.

Key Parts of Modernization

- Reduce unnecessary guardianships
 - If a guardianship is established for a person under the age of 30, automatic expiration of that guardianship after 72 months.

Privacy Changes

- 1) Bill of Particulars: Establishes a process to file private medical and financial information confidentially
- 2) Person subject of a guardianship proceeding does not put his/her capacity at issue simply by being in the proceeding.

Emergency Guardianship Clarified

MN 524.5-311 – Modified to include:

An emergency guardian's appointment under this section may only be extended once for a period not to exceed 60 days if the court finds good cause for the continuation of the guardianship.

Changes to Restricting Contact with Others

524.5-313 (c)(6) – Change includes:

A guardian may not restrict the ability of the person subject to guardianship to communicate, visit, or interact with others, including receiving visitors or making or receiving telephone calls, personal mail, or electronic communications including through social media, or participating in social activities, unless the guardian has good cause to believe restriction is necessary because interaction with the **person poses a risk of significant physical, psychological, or financial harm to the person subject to guardianship, and there is no other means to avoid the significant harm.** In all cases, the guardian shall provide written notice of the restrictions imposed to the court, to the person subject to guardianship, and to the person subject to restrictions. The person subject to guardianship or the person subject to restrictions may petition the court to remove or modify the restrictions;

Other Guardian Responsibilities

- Requires guardians to inform certain interested persons (including relatives) if the person under guardianship:
 - has an unexpected change in health or medical condition requiring physician treatment or hospitalization;
 - a significant situation that requires action by ambulance, law enforcement, or fire department;
 - dies;
 - or has a permanent change in his or her primary dwelling.

Other Changes

- Modernize terminology (person subject to guardianship)
- Align to federal law (ABLE accounts, federal gift tax exemption)
- Notice to interested persons when certain medical events occur
- Define “Interested Party”
- Look back period for bankruptcy for persons potentially serving as conservator reduced to 5 years
- Ensures bonds for estates over 1,000,000

A note on enactment dates:

- For all cases started on or after Aug. 1, 2020
 - Requires the petitioner to explain what less alternatives have been attempted, for how long, and why they are not sufficient to meet the needs. Requires the court to make specific findings about what less restrictive alternatives were attempted and why they were not sufficient.
- For all cases started before Aug. 1, 2020
 - Current standards and requirements regarding the petition, proceedings, and any guardianship or conservatorship order remain in effect.
- All other changes begin on Aug. 1, 2020

Next Steps

- Prohibition on admissions based on guardianship status
 - Overview of issue
 - Next Steps
- Increase practice and resources for supported decision making
- Support person-centered practices in all DHS/publically funded programs

Vulnerable Adult Financial Exploitation: Bank Reporting and Transaction Freezes

- In 2018 the legislature passed the [Safe Senior Financial Protection Act](#).
 - The law gave broker dealers immunity for good faith reporting and freezing of transactions when they suspect financial exploitation.
- [Minn. Stat. 45A.01 – Minn. Stat. 45A.07](#)

Vulnerable Adult Financial Exploitation: Bank Reporting and Transaction Freezes

- In 2019 banks and credit unions brought forward a bill that would provide similar liability protections for bankers.
- [SF 2466](#) was passed with broad bi-partisan support and [signed into law](#) at the end of the 2020 regular session.
- It gives banks and credit unions enhanced liability protections when they report and/or freeze a transaction because of suspected financial exploitation.

Vulnerable Adult Financial Exploitation: Rules Re: Banks

- There is a variety of federal and state laws that provide some levels of immunity for reporting
- This bill clarifies in a comprehensive manner that banks/credit unions are protected from civil, criminal, and administrative actions related to good faith reporting of suspected financial exploitation or delay/hold on suspicious transactions.

Vulnerable Adult Financial Exploitation: Bank Reporting and Transaction Freezes

- Banks and credit unions are immune from civil, criminal, administrative liability when reporting financial exploitation
- Ability to freeze a single transaction
- Eligible Adults or interested persons can appeal to department of commerce

Vulnerable Adult Financial Exploitation: Who is the subject of the protections?

- This law defines an eligible adult as:
 - Anyone over the age of 65
 - A vulnerable adult defined in 636.5572 Subd. 21
 - Categorical
 - Functional

Vulnerable Adult Financial Exploitation: What About Powers of Attorney?

- Minnesota law requires third parties to recognize POA documents when they meet certain statutory requirements (Minn. Stat. 524.5-20). This policy is designed to ensure people can actually use POA's as intended.
- What about POA fraud, misuse, and financial exploitation?

Vulnerable Adult Financial Exploitation: What About Powers of Attorney?

- Initial versions of the bill had a provision that would allow banks to refuse POA documents under suspicion of financial exploitation.
- The version that passed states that banks can refuse suspected *transactions* conducted by a POA and not violate 524.5-20. Can't simply refuse to accept the POA documents.

QUESTIONS?

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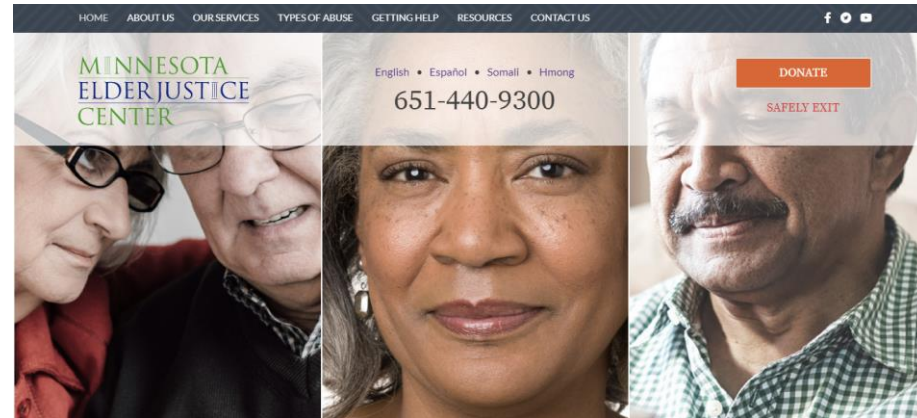


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Mobilizing communities to prevent and alleviate abuse, neglect and financial exploitation of older and vulnerable adults.

- › Public Awareness
- › Professional Education
- › Public Policy
- › Direct Service



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Victim Services

- Locate needed resources
- Help make sense of complicated systems and processes
- Make a plan for what comes next
- Legal Service Supports

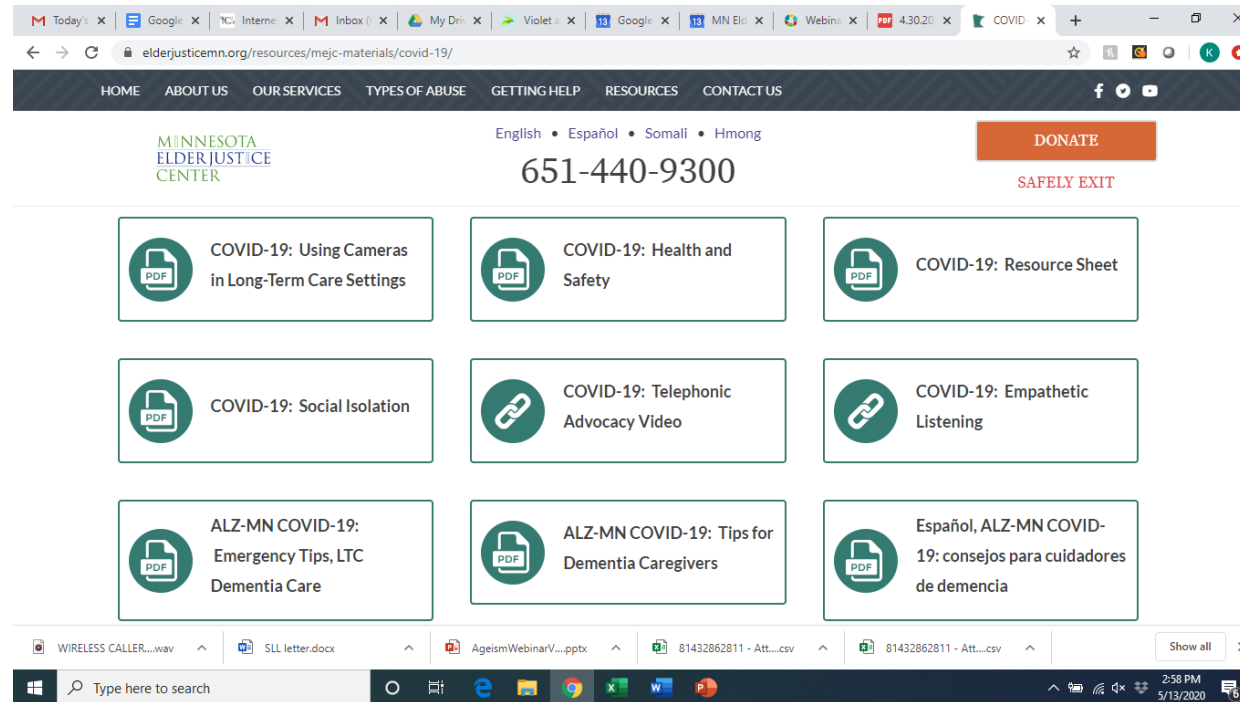
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To access a Victim Services advocate:

- Call 651-440-9305
- “Contact us” form on website

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MEJC COVID-19 Resources



Additional Resources

Minnesota Resources

- Senior LinkAge:
www.mnaging.net
- Minnesota Department of Commerce:
www.mn.gov/commerce
- Minnesota Office of the Ombudsman:
<https://mn.gov/omhdd/>
- Cornerstone Minnesota:
www.cornerstonemn.org

National Resources

- National Center on Elder Abuse: www.ncea.acl.gov
- Consumer Financial Protection Bureau:
www.cfpb.gov
- National Clearinghouse on Abuse in Later Life:
www.ncall.us
- Internet Crime Complaint Center (IC3): www.ic3.gov

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