

## GUIDING PRINCIPLES FOR GUARDIANSHIP AND/OR CONSERVATORSHIP

**Purpose Statement:** *The purpose of this document is to provide a framework to better understand the magnitude of guardianship/conservatorship interventions. These principles are consistent with the promotion of justice for vulnerable adults.*

- Adults, even many with cognitive challenges, are presumed to have decision making capacity unless adjudicated otherwise by a court.
- Adults with capacity to make informed choices have the legal right to make their own life choices even though they may be making poor decisions.
- Adults have the right to refuse services.
- The guardianship/conservatorship process is an adversarial court process with potential significant social, emotional and economic cost to the person.
- Guardianship pertains to matters involving the person's health, services etc. Conservatorship pertains to matters concerning the person's estate.
- The proposed ward is statutorily entitled to and therefore should have court appointed legal representation.
- The general standard of proof in court for guardian of person, and/or conservatorship of the estate, is "clear and convincing evidence" that a person lacks sufficient understanding or capacity to make or communicate responsible decisions about his or her person and/or estate.
- Prior to petitioning or review it is important to ensure less restrictive alternatives have been attempted, or would not be effective. These principles should also be considered in the reassessment for termination or modification of a guardianship/conservatorship.
- Guardianship/conservatorship is among the most restrictive interventions that can be implemented and limits the individual's legal rights to self-determination.
- Guardianship and/or conservatorship appointments are not permanent. They are reviewed annually by the courts and an individual has the right to petition for restoration at any time. This process is burdensome and costly.
- Guardianship does not alter the eligibility status for care and services available to the person. The same governmental eligibility guidelines exist for wards as for all others.

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