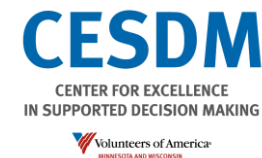


2020 Changes to Guardianship and Conservatorship Laws in Minnesota

THURSDAY AUGUST 13, 2020



Webinar Overview

- 10-15 Minutes for Questions at the End
- Please type questions in the Q & A Box
- Please Follow Up with Short Survey at the End

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](#).

Changes to Guardianship and Conservatorship

What prompted the changes?

- Use of Guardianship and Conservatorships as default
- Lack of analysis about less restrictive alternatives
- Not enough education about less restrictive alternatives
- Modernizing Guardianship and Conservatorship to be more person-centered

Terminology Changes

- Ward > Person Subject to Guardianship
- Protected Person > Person Subject to Conservatorship

Key parts of modernization

- Supported Decision making
 - Adds a definition
 - Modifies definition of incapacity
 - Requires petition and order to specifically state what less restrictive alternatives were tried



Changes to Definitions

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.

Changes to Definitions

Incapacitated Person: an individual who, for reasons other than being a minor, is impaired to the extent of lacking sufficient understanding or capacity to make personal decisions, and who is unable to meet personal needs for medical care, nutrition, clothing, shelter, or safety, even with appropriate technological and supported decision making assistance.

Guardianship Criteria

- impaired to extent lacks sufficient understanding or capacity to make personal decisions
- is unable to meet personal needs for medical care, nutrition, clothing, shelter, safety even with use of appropriate technological and supported decision making assistance
- 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.***
- Court must make specific findings particular to the respondent why less restrictive alternatives do not work.

Conservatorship Criteria

- Person is unable to manage property & business affairs b/c of impairment in ability to receive and evaluate information or make decisions, even with use of appropriate technological assistance;
- Has property which will be wasted or dissipated unless management is provided *or*
- Money is needed for support, care, education, health, and welfare of the person or individuals entitled to the person's support *and*
- Identified needs cannot be met by less restrictive means, including ***but not limited to*** use of appropriate technological assistance, ***supported decision making, representative payee, trusts, banking or bill paying assistance, or appt. of attorney in fact***
- 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.

Key Parts of Modernization

Bill of Rights

- Increased consideration of preferences, including cultural practices
- Participate in decision making about health care decisions
- Right to employment and employment supports
- Restriction of interactions only if poses risk of significant harm to person
- Written notice of restriction to person, person being restricted, and court

Key Parts of Modernization

- Emergency guardianship clarified:
 - emergency guardianships are temporary;
 - can only last for 60 days; and
 - can only be renewed once.

Key Parts of Modernization

- Better protect rights of persons under guardianship
 - Better privacy protections in guardianship proceedings. Specifically – the law creates bill of particulars so that parties can file private financial and medical information confidentially. Directs parties to file certain documents with private financial and medical information with the bill of particulars.
 - **NOTE:** [Court issued recent orders](#) halting the implementation of this change. Judicial Branch called for a hearing on Aug. 28 to consider whether to incorporate the legislative changes into court rules.

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 guardian or conservator reduced to 5 years

Other Changes

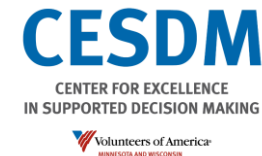
- Notice to interested persons when certain medical or other events occur:
 - Requires guardians to inform certain interested persons (including relatives) if the person under guardianship: has an unexpected change in health or medical condition requiring physician treatment or hospitalization; a significant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

Effective Dates

For cases filed on or after August 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 cases filed before August 1, 2020: Current standards and requirements regarding the petition, proceedings, and any guardianship or conservatorship order remain in effect.

All other changes (e.g. rights of persons under guardianship and responsibilities of guardians) went into effect on August 1, 2020.



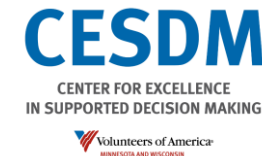
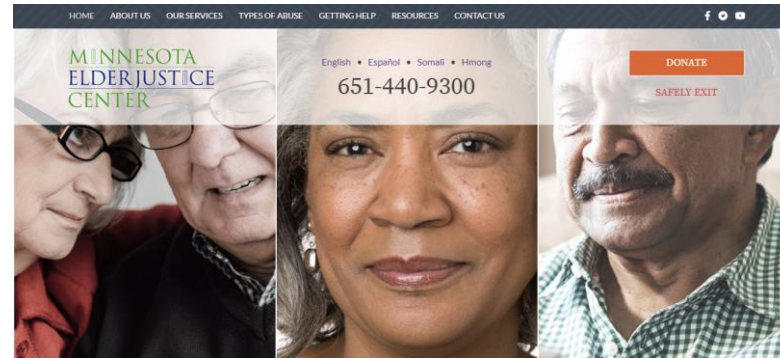
Possible Areas of Advocacy for the Future

- Prohibition on admissions based on guardianship status (Not a part of the 2020 changes)
- Increase practice and resources for supported decision making

The Minnesota Elder Justice Center

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

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



The Minnesota Elder Justice Center

Follow us on Social Media:



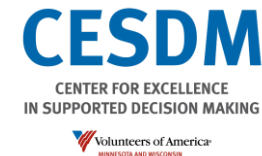
@elderjusticemn



<https://www.facebook.com/elderjusticemn>

Join our Mailing List:

Email: katie.behrens@elderjusticemn.org



CESDM

CENTER FOR EXCELLENCE
IN SUPPORTED DECISION MAKING



GUARDIANSHIP INFORMATION LINE

952-945-4174

1-844-333-1748

cesdm@voamn.org



<https://www.facebook.com/cesdmvoamn/>

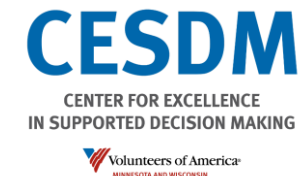
- *Phone Consultation, Advice, I&R*
- *Assessments*
- *Facilitation of Supported Decision Making & Surrogate Decision Making Legal Tools*
- *Petitioning for G/C, Terminations, Modifications*



- Annual Summit
- Quarterly newsletters with local and national news
- Community and Professional Education & Training: Guardianship, SDM, etc.

Join mailing list:

www.wingsmn.org



QUESTIONS?

Sean Burke

Sean.Burke@elderjusticemn.org

651-440-9308

www.elderjusticemn.org

Anita Raymond

araymond@voamn.org

952-945-4172

<https://www.voamnwi.org/cesdm>



CESDM
CENTER FOR EXCELLENCE
IN SUPPORTED DECISION MAKING

Volunteers of America
MINNESOTA AND WISCONSIN

MINNESOTA
ELDER JUSTICE
CENTER