

Less Restrictive Alternatives Available Prior to Guardianship

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Background

The appointment of a guardian is a serious matter involving the limitation of the individual's independence and rights, and it should be considered only as a last resort.

Before seeking a conservatorship and/or guardianship, [Minn. Stat. § 524.5-310](#) require that less restrictive alternatives are seriously considered and meaningfully tried, as appropriate. Less restrictive alternatives may include:

- A Healthcare Directive
- Appropriate Technological Assistance
- Supported Decision Making
- Community or Residential Services

If a person has one or more of these in place, guardianship may not be necessary.

A Healthcare Directive

A health care directive is a written document that may be executed by a person with capacity that may include health care instructions to inform others (health care providers, others assisting with health care, family members, and a health care agent) of the individual's health care wishes. A health care directive also allows an individual to name an agent if the individual wants the healthcare agent to make health care decisions when the individual lacks decision-making capacity. The lack of future capacity to make health care decisions is determined by an attending physician, physician assistant, or advanced practice registered nurse.

A health care directive is important if an individual's attending physician determines the individual can't communicate their health care choices (because of physical or mental incapacity). It is also important if an individual wishes to have someone else make health care decisions on behalf of the individual. In some circumstances, the directive may state that the individual wants someone other than an attending physician to decide when the individual cannot make their own decisions.

An attorney can help you understand your options and draft a health care directive for you. There are also forms for health care directives. It's not required that you have an attorney draft one or use a form, but the health care directive must meet the following requirements, per [Minn. Stat. 145C.03](#), to be legal:

- Be in writing and dated.
- State the individual's name.
- Be signed by the individual or someone who the individual authorizes to sign for on their behalf, when the individual can understand and communicate their health care wishes.
- Have your signature verified by a notary public or two witnesses.
- Include the appointment of an agent to make health care decisions for you and/or instructions about the health care choices you wish to make.

Before a healthcare directive is prepared or revised, an individual should discuss their health care wishes with their doctor or other health care provider.

Appropriate Technological Assistance

Technological assistance that may be used to assist a person that would otherwise need to be subject to guardianship or that is subject to guardianship may include, but is not limited to:

- Computer assisted communication
- Computer controlled wheelchairs
- Assistance animals such as seeing eye dogs
- State the individual's name
- Any other form of applied technology that can assist the person retain their independence.

Supported Decision Making

Supported Decision Making is a recognized lesser restrictive means to guardianship that is appropriate in cases where a person that may otherwise need to be subject to a guardianship is able to maintain their independence without a need for the guardianship with the assistance of Supported Decision Making.

Supported Decision Making allows trusted friends, family members, or professionals to make decisions with the person rather than for them. It helps them understand the situations and choices they face, consistent with the individual's wishes, so they may make their own decisions without the need for a conservatorship and/or guardianship.

Supported Decision Making may be guided by a formal, written document—called a Supported Decision Making Agreement – or it may be informal, simple conversations with the person to help them make decisions.

Supported Decision Making simply means you support the person in ensuring their needs are met—making decisions with the person, not for the person, to ensure they are safe, happy, and living their best life. It's about being creative in helping people achieve their wants (goals, desires, wishes, hopes) while ensuring their needs are met.

Ultimately, it's about finding balance: being as safe as necessary, not as safe as possible.

Community or Residential Services

Many advocacy and community organizations work with certain populations, such as the elderly and the disabled, whose members may be vulnerable and/or may be in need of a guardian. Some services and benefits are available as a matter of right under Minnesota law, often called entitlements, based on income, age or medical condition. Other services are provided by non-profits and others in the community.

A case manager or social worker through the individual's county of residence in Minnesota can help identify community or residential services that can benefit individuals and, in some cases, may help individuals maintain their independence without the need for a guardianship.

Resources

- [Guardianship and Conservatorship Manual](#)
- [MN Dept. of Health - Health Care Directives Q&A](#)
- [MN Attorney General - Sample Health Care Directive](#)
- [Supported Decision Making - WINGS MN \(SDMA Sample Template Here\)](#)
- [MN Association for Guardianship & Conservatorship \(MAGiC\) - Alternatives](#)
- [Minn. Stat. Chap. 524, Article 5 - Protection of Persons Under Disability & Their Property](#)
- [Minn. Stat. Chap. 145C - Health Care Directives](#)

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