

Guardianship Reform

Fact Sheet

There were many important changes made to Minnesota's guardianship law during the 2020 legislative session. The Arc Minnesota strongly supported these changes, because they:

- help promote supported decision-making and other less-restrictive alternatives to guardianship;
- strengthen the Bill of Rights for people subject to guardianship and make sure that their preferences are respected as guardians make decisions about important elements of life;
- protect and ensure access to employment and employment supports;
- allow for guardianships that are time-limited, which can help make sure that each person's guardianship is more individualized and tailored to their specific needs;
- allow guardians to create ABLE accounts, which can help support financial success and stability for people with disabilities.

These changes embrace progress toward less restrictive alternatives for people with disabilities, mental illness, and older adults, and help retain their civil liberties.

These changes align with The Arc Minnesota's mission, vision, and values of promoting the self-determination and autonomy of people with disabilities, honoring their capacity and resiliency, and supporting them in building true belonging.

Here are some of the key changes that may impact you, your family, and/or individuals whom you support:

Time-Limited Guardianships

- Any person under 30 years old determined to need a guardianship, must have a time limited guardianship.
- This can last for 72 months (6 years) at most.
- A judge can limit the time of any guardianship, even for people who are older than 30.
- When the time is up, the guardian can:
 - Encourage the person to use alternatives to guardianship.
 - Go back to court to petition for guardianship again.

Limited emergency guardianship orders

- In an emergency, the court may appoint a temporary guardian.
- This type of emergency guardianship can only last 60 days.

- It may be extended only once, for another 60 days.

Stronger consideration of alternatives to guardianship

- The court is encouraging people to pursue alternatives to guardianship before considering restricting rights through guardianship.
- A guardianship petition considered by a judge must now include:
 - Which alternatives were considered and tried.
 - How long the alternatives were tried.
 - The details of why they did not work.
 - What unmet decision making needs a person still has, and therefore why a guardianship is necessary.

Changes to Strengthen the Bill of Rights

People who are subject to guardianship still have certain rights, which are included in the Bill of Rights. The changes made in 2020 strengthen the Bill of Rights, to make sure that people have the right to:

- Individual preferences in medical and other decision-making.
- Access employment and employment supports.
- Have choice in all aspects of life unless delegated to the guardian or conservator by court order.
- Make decisions about their clothing, furniture, vehicles, and other property.
- Be consulted about, and make decisions on personal image and name, unless notated by the court.
- Build and maintain relationships with the people of their choosing.
 - If the guardian feels the person subject to guardianship is in danger, the guardian can limit who they interact with.
 - In order to limit that interaction, they must provide written notice to both people, and the court.
 - The person subject to guardianship, or the person whose visitation permissions are being restricted, can ask the court to remove restriction.

Authority to create ABLE Accounts

- A guardian will now be able to establish an ABLE account, but they will not have access to or control over any of the funds in the ABLE account.

Individual control over wages

- If a person subject to conservatorship has a job, they can be paid directly and control any money they make from that employment. Their conservator will not account for nor control this money.
- The change in statute does not refer to people subject to guardianship, because guardians do not have control over money.

Disclosing bankruptcy

- People applying to be a guardian or conservator will have to disclose if they have filed for bankruptcy in the last five years.

Updated Definitions

- Person Subject to Guardianship
 - “An individual for whom a guardian has been appointed.”
 - This replaces use of the term “ward”.
- Person Subject to Conservatorship
 - “A minor or other individual for whom a conservator has been appointed.”
 - This replaces use of the term “protected person”.
- Supported Decision Making
 - “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.”
- Professional Guardian/Conservator
 - “A person acting as guardian or conservator for three or more individuals not related by blood, adoption, or marriage.”
- 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.”
- Interested Person
 - A person who is: subject guardianship or conservatorship, a person nominated or appointed as guardian or conservator, a legal representative, a family member of the person, an adult who has lived with the person at least 6 months, agencies managing public benefits, an ombudsman or advocate supporting the individual, and/or a health care agent.
 - The bill also added adult step-children and specific tribal leaders if/when applicable.

If you would like to review the changes more in-depth (with changes stricken and underlined): revisor.mn.gov/laws/2020/0/Session+Law/Chapter/86

Here is a helpful summary of all the changes, made by the Minnesota House of Representatives' Research staff: house.leg.state.mn.us/hrd/bs/91/HF3517.pdf

With questions or for more information, contact The Arc Minnesota at info@arcminnesota.org or call 833.450.1494.