

# GUARDIANSHIP ESTABLISHMENT FUNDS PROTOCOL

1. The alleged incapacitate person must be ineligible for case management services through the Developmental Disabilities program.
2. The alleged incapacitate person must meet the definition of incapacitated adult (NDCC 30.1-26-01).
3. The alleged incapacitate person must have income at or below 100% of federal poverty level and/or be Medicaid eligible.
4. The referral source will complete SFN 1177 Request for Guardianship Establishment Funds prior to beginning the guardianship petitioning process and forward it to the Adult & Aging Services Section. Incomplete or indecipherable forms will be returned without review.
  - a. Cases where an emergency guardianship already exists and the referral source is seeking assistance with funding for a full/permanent guardianship will be considered on a case-by-case basis.
5. The referral source will attach all required documentation to SFN 1177 including evaluations, neuropsych testing, treatment plan, progress notes, diagnoses or any other information that documents a need for guardianship. Division has the discretion to request other documentation to substantiate the need.
6. The proposed guardian must sign page four (4) of SFN 1177 indicating a willingness to serve as guardian for the alleged incapacitate person.
7. Within three (3) working days of receiving the completed SFN 1177, staff members from the Adult & Aging Services Section and will review SFN 1177 and make recommendations on the case. Recommendations will be for Approval, Denial, or Request Additional Information.
8. If the request is approved, the referral source will initiate action to complete the guardianship process. The referral source will be responsible for securing an attorney to complete the petition within the funding cap. The Court will appoint a Guardian Ad Litem, and Court Visitor. The referral source will be informed in writing of the amount of funds available to secure the guardianship. Bills are to be submitted to the Adult & Aging Services Section for payment.
9. Emergency requests will be accepted. The primary criteria necessary for an emergency request would be for the safety of the alleged incapacitate person

who is in imminent danger. Upon approval, the referral source will secure the services of an attorney etc. to accomplish the request, as outlined above.

10. Concerning confidentiality:

- a. A North Dakota Department of Health and Human Services health care provider, including a Developmental Disabilities Program Manager (Department), who believes that a client needs a guardian and the lack of guardian is affecting the Department's ability to treat the individual or affects the Department's ability to obtain reimbursement (payment) for treatment or services, may disclose protected health information (PHI) to an attorney or a proposed guardian for the purpose of preparing a guardianship petition.
- b. The Department is permitted to disclose PHI if in good faith, the Department believes that the disclosure is necessary to prevent or lessen a serious and imminent threat to the health and safety of a person or the public, and the disclosure is to a person reasonably able to prevent or lessen the threat.
- c. The Department may also disclose PHI based on a valid authorization that permits the Department to disclose the information.
- d. The Department is not permitted to disclose substance use disorder treatment information confidential under 42 CFR Part 2 (Part 2) without an authorization that complies with Part 2 or a proper Part 2 court order.
- e. Entities outside of the Department are to secure the proper authorizations and comply with all applicable state and federal confidentiality laws when accessing this program.