

# GUARDIANSHIP ESTABLISHMENT FUNDS PROTOCOL

1. The proposed Ward must be ineligible for case management services through the Developmental Disabilities program.
2. The proposed Ward must meet the definition of incapacitated adult (NDCC 30.1-26-01).
3. The proposed Ward 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 Aging Services Division. 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 proposed ward.
7. Within three (3) working days of receiving the completed SFN 1177, staff members from the Aging Services Division and the Division of Mental Health and Substance Abuse Services 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 case manager will sign the petition, if appropriate, and the attorney will handle the legal work. Case managers will be informed in writing of the amount of funds available to secure the guardianship. Bills are to be submitted to the Aging Services Division for payment.

9. Emergency requests will be accepted. The primary criteria necessary for an emergency request would be for the safety of the client 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. If the North Dakota Department of Human Services believes that a client needs a guardian and the lack of guardian is affecting the North Dakota Department of Human Services' ability to treat the individual or affects reimbursement (payment), the North Dakota Department of Human Services can disclose PHI to an attorney for the attorney to draft a petition. A business associate agreement is not required as HIPAA allows the North Dakota Department of Human Services to disclose PHI for treatment and payment purposes. In addition, the attorney is not providing a service to the North Dakota Department of Human Services as the attorney is representing the proposed Guardian.
- b. If the North Dakota Department of Human Services acts in good faith and believes that the use or disclosure of PHI 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, the North Dakota Department of Human Services can disclose PHI.
- c. The North Dakota Department of Human Services can also disclose the information based on a valid authorization that allows the North Dakota Department of Human Services to disclose the information.
- d. The North Dakota Department of Human Services cannot disclose any 42 CFR Part 2 information, without an authorization or a 42 CFR Part 2 petition, notice, and court order. The regional human service centers can disclose non-42 CFR Part 2 information as set forth above.
- e. Entities outside of the North Dakota Department of Human Services are to secure the proper authorizations and follow confidentiality guidelines when accessing this program.