



Supported Decision Making in Minnesota

Interim Report to the Minnesota State Legislature

January 2025

For more information contact:

Minnesota Department of Human Services
Aging and Disability Services Division
PO Box 64976
St. Paul, MN 55101

Aging: 651-431-2600 / Disability: 866-267-7655 or
651-431-4300



For accessible formats of this information or assistance with additional equal access to human services, email us at aasd.dhs@state.mn.us, call 651-431-2600, or use your preferred relay service. ADA1 (3-24)

Minnesota Statutes, Chapter 3.197, requires the disclosure of the cost to prepare this report. The estimated cost of preparing this report is \$6,250.

Printed with a minimum of 10 percent post-consumer material. Please recycle.

Contents

- I. Executive summary 5
- II. Legislation 7
- III. Introduction 9
 - A. Purpose of this report..... 10
- IV. Research Design and Methods 11
 - A. Questions..... 11
 - B. Methods..... 11
 - C. Limitations 12
- V. Background 13
 - A. Minnesota’s guardianship system 13
 - B. Overuse of the guardianship system 15
 - C. Misperceptions about the guardianship system 17
 - D. Costs of the overuse of the guardianship system 18
- VI. Research on Supported Decision Making 19
 - A. What is Supported Decision Making?..... 19
 - B. Supported Decision Making Processes 21
 - C. Effectiveness of Supported Decision Making Programs 22
 - The Impact of Supported Decision Making on Decision Makers and Supporters 23
 - Supported Decision Making as an Alternative to Guardianship 23
 - D. Supported Decision Making in Minnesota 24
 - Overview of Supported decision making Grantees and Grant-Funded Activities 25
- VII. Key Findings 27
 - A. High-Level Findings 27
 - B. Findings Related to Grantee Activities and Outcomes 29

VIII. Conclusions, Recommendations, and Next Steps..... 36

X. Appendix A: Grantee Organizations and Programs 37

XI. References 42

I. Executive Summary

In Minnesota, adults with cognitive limitations or disabilities who have been determined by the court to lack capacity to “make or communicate responsible personal decisions” may be subject to guardianship. Guardianship is a legal relationship created and managed by the state in which a person or entity is appointed as a surrogate decision maker for an individual who the state determines is unable to make decisions for themselves. Those under guardianship lose the right to make an array of choices about their own lives, including decisions involving medical care, where to live, and how to spend their time.

Because an individual subject to guardianship experiences a loss of rights and personal autonomy, it is not an arrangement that should be entered into lightly. Minnesota law requires that prior to establishing guardianship, less restrictive alternatives must be attempted and shown to be insufficient in meeting an individual’s needs. However, in practice, guardianship is often a default option for young people with disabilities transitioning to adulthood, adults with severe and persistent mental illnesses or cognitive limitations, and aging adults in cognitive decline. Overuse of the guardianship system results in significant costs to the individuals subject to it, as well as the systems with which they interact.

In 2023, the state of Minnesota authorized the Minnesota Department of Human Services (DHS) to award grants to organizations to provide and promote supported decision making services as an alternative to guardianship. Supported decision making is an approach to decision making for adults with intellectual or developmental disabilities or other cognitive impairments that provides them the support they need to be the ultimate decision makers in matters concerning their own lives. With supported decision making, decision makers are assisted by one or more supporters in understanding options, implications, and consequences of a decision and, if necessary, in communicating and interpreting their preferences to others. Unlike guardianship, which often strips individuals of the majority of their individual rights, supported decision making allows individuals to retain their legal and civil rights and make their own decisions.

Per Laws of Minnesota, 2023, Chapter 61, Article 1, Section 61, DHS is required to issue two reports to the Minnesota Legislature describing impacts and outcomes of the grants. For both the 2024 and 2025 reports, DHS contracted with Rise Research to evaluate activities funded under the grant and provide recommendations related to continued support and funding for supported decision making activities in Minnesota. Dr. Robin Phinney and Renae Rodgers, MPP, of Rise Research conducted the analysis and completed the report.

The first of the two reports, this document includes a review of the research literature on supported decision making, focusing on processes and evidence for effectiveness. The report also introduces the five organizations funded under the supported decision making grant program and describes their grant-funded activities, intended outcomes, and early findings related to implementation of the program.

Based on an in-depth review of existing research on guardianship and supported decision, robust data collection and reporting by organization funded by the grant program, and interviews and check-ins with grantees, the report yields several findings:

- In Minnesota, a lack of data significantly limits our understanding of the guardianship system and alternative approaches such as supported decision making.
- Existing evidence indicates overuse of the guardianship system, lack of information and services related to less restrictive alternatives such as supported decision making, and considerable costs to individuals and systems when unnecessary guardianships are established.
- While research on supported decision making is still emerging, available evidence suggests that supported decision making can be a viable alternative to guardianship that has positive impacts on decision makers' well-being. However, questions remain about how best to implement supported decision making as an alternative at a larger scale.
- Organizations funded by this grant represent a diversity of geographic locations and populations served. In addition, several grantees are prioritizing cultural communities and/or targeting systems that disproportionately serve historically marginalized and/or underserved populations.
- Grantees are engaging in an array of activities to reduce unnecessary guardianship and promote supported decision making. Many of these activities have also been adopted by innovative pilot programs aimed at understanding supported decision making and its effectiveness across the United States.
- While grantees are early in the grant process, expected short-term outcomes include increased awareness of supported decision making and willingness to act on new information among professionals, community partners, and individuals currently or potentially subject to guardianship and their supporters.
- For individuals and their supporters, short-term outcomes include utilization of supported decision making rather than guardianship or restoration of decision-making rights in at least some areas. Supported decision making arrangements may be utilized prior to establishing a guardianship (diversion) or with an individual who transitions out of an unnecessary guardianship. Short-term outcomes also include individual satisfaction with the supported decision making arrangement.

While legislative recommendations are perhaps premature given the early stage of the grant, several findings are clear from the review of existing research and analysis of early grant-funded activities. First, making evidence-informed decisions about guardianship and the implementation and effectiveness of less restrictive alternatives will require Minnesota to invest in more rigorous data collection and analysis. Second, evidence from both research and practice suggests a need for the state of Minnesota to continue investing in less restrictive alternatives to guardianship, such as supported decision making. Third, organizations funded by this grant are pursuing innovative approaches to reducing guardianship and promoting supported decision making. Such activities may require additional time and funding to better understand their implementation and effectiveness in reducing unnecessary guardianships and promoting supported decision making across Minnesota.

II. Legislation

Laws of Minnesota, 2023, Chapter 61, Article 1, Section 61

Sec. 61. SUPPORTED-DECISION-MAKING PROGRAMS.

Subdivision 1. Authorization.

The commissioner of human services shall award general operating grants to public and private nonprofit organizations, counties, and Tribes to provide and promote supported decision making.

Subd. 2. Definitions.

(a) For the purposes of this section, the terms in this section have the meanings given.

(b) "Supported decision making" has the meaning given in section 524.5-102, subdivision 16a.

(c) "Supported-decision-making services" means services provided to help an individual consider, access, or develop supported decision making, potentially as an alternative to more restrictive forms of decision making, including guardianship and conservatorship. The services may be provided to the individual, family members, or trusted support people. The individual may currently be a person subject to guardianship or conservatorship, but the services must not be used to help a person access a guardianship or conservatorship.

Subd. 3. Grants.

(a) The grants must be distributed as follows:

(1) at least 75 percent of the grant money must be used to fund programs or organizations that provide supported-decision-making services;

(2) no more than 20 percent of the grant money may be used to fund county or Tribal programs that provide supported-decision-making services; and

(3) no more than five percent of the grant money may be used to fund programs or organizations that do not provide supported-decision-making services but do promote the use and advancement of supported decision making.

(b) The grants must be distributed in a manner to promote racial and geographic diversity in the populations receiving services as determined by the commissioner.

Subd. 4. Evaluation and report.

By December 1, 2024, the commissioner must submit to the chairs and ranking minority members of the legislative committees with jurisdiction over human services finance and policy an interim report on the impact and outcomes of the grants, including the number of grants awarded and the organizations receiving the grants. The interim report must include any available evidence of how grantees were able to increase utilization of supported decision making and reduce or avoid more restrictive forms of decision making such as guardianship and conservatorship. By December 1, 2025, the commissioner must submit to the chairs and ranking minority members of the legislative committees with jurisdiction over human services finance and policy a final report on the impact and outcomes of the grants, including any updated information from the interim report and the total number of people served by the grants. The final report must also detail how the money was used to achieve the requirements in subdivision 3, paragraph (b).

Subd. 5. Applications.

Any public or private nonprofit agency may apply to the commissioner for a grant under subdivision 3, paragraph (a), clause (1) or (3). Any county or Tribal agency in Minnesota may apply to the commissioner for a grant under subdivision 3, paragraph (a), clause (2). The application must be submitted in a form approved by the commissioner.

Subd. 6. Duties of grantees.

Every public or private nonprofit agency, county, or Tribal agency that receives a grant to provide or promote supported decision making must comply with rules related to the administration of the grants.

III. Introduction

The ability to make choices about one’s own life is widely recognized as an important right (Convention on the Rights of Persons with Disabilities, 2006; International Covenant on Civil and Political Rights, 1966). Yet in the United States, individuals with cognitive limitations or disabilities are at risk for losing that right through the system of guardianship. Guardianship is a legal relationship created and managed by the state, in which a person or entity is appointed as a surrogate decision maker for an individual who the state determines is unable to make decisions for themselves (Karp & Wood, 2007).¹ Those under guardianship lose the right to make an array of choices about their own lives, including decisions about medical care, where to live, or how to spend their time (Blanck & Martinis, 2015).

While guardianship is necessary in some cases, because of the loss of rights and personal autonomy associated with guardianship, it is not an arrangement that should be entered into lightly. Indeed, Minnesota law states that guardianship may only be established if less restrictive means have been attempted and are insufficient to meet an individual’s needs (Minn. Stat. 524.5-310). In practice, however, guardianship is often encouraged for individuals with intellectual or developmental disabilities or other cognitive impairments (State of Minnesota Office of the Legislative Auditor, 2024), and plenary guardianships, in which nearly all legal decision making rights are granted to the guardian, are the norm (Blanck & Martinis, 2015).

The systemic preference for guardianship over individuals with disabilities and cognitive impairments is likely leading to the misapplication of guardianship in cases where a surrogate decision maker is not necessary and a less restrictive alternative could serve the individual’s needs (Blanck & Martinis, 2015; Jameson et al., 2015; Kohn et al., 2013). In addition to the loss of individual rights, the lack of available alternatives has resulted in an overburdened court system that lacks capacity to meaningfully monitor guardianships (Karp & Wood, 2007; U.S. Government Accountability Office, 2010). This problem is likely to worsen as the population ages and number of individuals at risk of guardianship grows (Kohn et al., 2013).

Supported decision making is an approach to assisting individuals who have difficulty making decisions due to a cognitive or intellectual disability. With a supported decision making arrangement, a supporter(s) assists an individual in decision making, allowing them to make choices about their own lives. The idea of supported decision making is similar to the process that many adults go through in relying on the advice and support of trusted individuals to make decisions about their lives. While the concept itself is familiar to many adults, supported decision making represents an innovation in the

¹ Although some state laws, including Minnesota’s, differentiate between guardianship, in which the guardian has the right to make personal and health care decisions for the individual, and conservatorship, in which the decision-making powers are restricted to financial matters, the term “guardianship” is often used to refer to both scenarios (Kohn et al., 2013). This report uses the term “guardianship” in this broad sense as well.

fields of disability and aging – away from a paternalistic approach to supporting individuals with cognitive limitations or disabilities and towards a person-centered approach.

A. Purpose of this report

Supported decision making is a relatively new concept in Minnesota law. In 2020, Minnesota updated sections of its Probate Code to include supported decision making as a less restrictive alternative to guardianship (Minn. Stat. 524.5-310). In 2023, the state authorized the Minnesota Department of Human Services (DHS) to award grants to organizations to provide and promote supported decision making services (Laws of Minnesota, 2023).

Per Laws of Minnesota, 2023, Chapter 61, Article 1, Section 61, DHS is required to issue two reports to the Minnesota Legislature describing impacts and outcomes of the grants. The interim report must include evidence of how grantees are increasing utilization of supported decision making and reducing or avoiding more restrictive forms of decision making such as guardianship (when appropriate). For both the 2024 and 2025 reports, DHS contracted with Rise Research to evaluate activities funded under the grant and provide recommendations related to continued support and funding for supported decision making activities in Minnesota.

As the first of the two required legislative reports, this document presents an overview of the guardianship system and the need for supported decision making programs in Minnesota. The report includes a review of the research literature on supported decision making, focusing on processes and evidence for effectiveness. The report also introduces the five organizations funded under the supported decision making grant program and describes their grant-funded activities, intended outcomes, and early findings related to implementation of the program.

The report, prepared by Rise Research, proceeds as follows. In the next section, we discuss the research design, questions, and methods. The third section provides background on Minnesota's guardianships system and the statewide need for supported decision making programs, and the fourth presents an overview of the research literature, as well as a description of supported decision making programs funded by the grant. The fifth section presents high-level findings as well as findings from the early stages of program implementation. The final section concludes and describes next steps.

IV. Research Design and Methods

This report aims to help the state of Minnesota better understand the need for supported decision making programs, as well as the implementation and early outcomes associated with activities funded under the supported decision making grant program. The work also aims to lay the groundwork for the grant-end report, which is required to be submitted to the Minnesota Legislature in December 2025.

A. Questions

The analysis is guided by several high-level questions, including:

1. What is the need for supported decision making programs in Minnesota?
2. What evidence exists for the effectiveness of supported decision making programs?

Questions related to grant funding, grantee activities, implementation of grant-funded program, and outcomes include the following:

3. How does the distribution of grants aim to promote racial and geographic diversity in populations served?
4. What strategies/programmatic changes have grantees adopted to increase utilization of supported decision making and reduce/avoid more restrictive forms of decision making?
5. How do strategies and programmatic changes align with research and best practices on supported decision making?
6. What are the intended outcomes of such strategies/programmatic changes? What are emerging outcomes in terms of populations served?
7. What are emerging organizational- and systems-level challenges to implementation?

B. Methods

To provide context for understanding supported decision making programs in Minnesota, the research team reviewed academic and applied research on guardianship and supported decision making. To answer question related to grant-funded activities, organizations funded by the grant were asked to participate in several data collection activities. Organizations reported monthly information about grant-funded activities, including services provided and persons served. Each grantee participated in a 60-minute interview conducted via Zoom in October and November. One member of the research team also attended a half-day training on supported decision making provided by the Center for Excellence in Decision Making.

The research team analyzed monthly grantee data provided from July 2024 through October 2024 in addition to attending monthly check-in meetings with individual grantees and the grantee group as a whole. Quantitative data were analyzed in Excel and qualitative data were analyzed using NVivo Qualitative Software.

C. Limitations

There are several limitations worth noting. First, information about the use and/or overuse of the guardianship system and use of supported decision making is limited by a lack of data. In Minnesota, although guardianship is governed by state statute, it is managed and processed by all county district courts as well as various tribal courts across the state. The lack of data makes it difficult to determine the exact number of individuals under guardianship, characteristics of individuals subject to guardianship, the diagnosis or circumstance that led to their guardianship, or the extent to which those currently under guardianship would be better served by less restrictive alternatives such as supported decision making.

Second, supported decision making is a relatively new practice and research on its implementation and effectiveness is still emerging. Several pilot studies attest to the viability of supported decision making as an alternative to guardianship and offer support for the range of grantee activities conducted under this grant. However, the lack of evidence on supported decision making structure, effectiveness, and scalability make it difficult to assess whether grantee activities are aligned with research and best practices in this area.

Finally, at the time of this writing, grantees were in the early months of a short grant cycle. As a result, some grantees are still in the process of setting up the systems to facilitate direct service provision (such as referral processes). This report therefore focuses on early implementation of grant-funded activities as well as expected outcomes from those activities. Grantees are engaged in robust data collection efforts as part of this grant. Thus, we expect the grant-end report, due in 2025, to provide considerably more information on the implementation and outcomes associated with the grant program.

V. Background

A. Minnesota’s guardianship system

In Minnesota, adults who are determined by the court, based on clear and convincing evidence, to lack capacity to “make or communicate responsible personal decisions” may be subject to guardianship. Guardianship is established when the court determines the adult is incapacitated and has identified needs that are unable to be met through less restrictive alternatives to guardianship (Minn. Stat. 524.5-310). Guardians in Minnesota are appointed by the court and are granted powers to make certain types of decisions based on the court’s findings. When a court determines that an adult is incapacitated, is unable to make financial decisions, and has property that requires management, a conservator is appointed to make financial decisions for the individual.²

KEY DEFINITIONS

- ⇒ Guardianship: A guardian is appointed by the court to make personal decisions for individuals who are determined to lack the understanding or capacity to make or communicate responsible personal decisions and have needs that are unable to be met by less restrictive means (Minn. Stat. 524.5-310).
- ⇒ Less Restrictive Means or Alternatives: Alternatives to guardianship that allow an individual to retain as much self-determination and decision-making over their lives as possible while still addressing care and safety needs. Examples include supported decision making, appointment of health care agent, community or residential supports, and technological assistance.
- ⇒ Supported Decision-Making: "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" (Minn. Stat. 524.5-102)

There are different types of guardianships. Guardianships may be limited, in which the guardian is only granted decision-making authority in some areas of life (such as basic living arrangements) or plenary, in which almost all legal decision-making rights are given over to the guardian. Emergency guardianships of up to 60 days may be established if it can be shown that a person or estate is in imminent harm and such an arrangement is necessary for protection (Minn. Stat. 524.5-311). Guardianships can also be time-

² Although guardians are not granted the authority financial decision, they at times find themselves in a position of having to do so if there is no acting conservator of the person’s estate (Minn. Stat. 524.5-313).

limited, and any person subject to guardianship who is under the age of 30 when a guardianship is established cannot have a guardianship exceeding 72 months (Minn. Stat. 524.5-310; see also Minnesota Judicial Branch, State Administrator’s Office, 2024).

There are several groups at risk of guardianship, including young people with cognitive or intellectual disabilities, adults with severe and persistent mental illness, and older adults in cognitive decline. Each group may have different interactions with the guardianship system and varying service needs. For example, young people with cognitive or intellectual disabilities who enter into guardianships at age 18 may live their entire lives lacking the ability to make decisions about their own lives. Adults with severe and persistent mental illnesses may require varying levels of decisional support at different times over their lifespan. Older individuals with progressive illnesses and cognitive decline likely spend less time in guardianship system overall but may be at particularly high risk for guardianship due to increased interactions with the health system. Though guardianship is necessary in some cases, the loss of autonomy associated with guardianship results in significant costs for all groups.

Although it is difficult to quantify the extent of need for guardianship, in 2023 approximately 6 percent of Minnesota adults (approximately 267,828 people) experienced a cognitive disability,³ defined as serious difficulty concentrating, remembering, or making decisions.⁴ Cognitive difficulties are more pronounced among older populations. In 2023, 7.7 percent of Minnesotans aged 65 and older reported experiencing cognitive difficulties (approximately 79,199 people); of these adults, more than half of them (53.2%) live in a household by themselves. Use of guardianship can be expected to increase in Minnesota in the coming years as the population continues to age, with more than 20% of Minnesotans expected to be age 65 or older by 2030 (Minnesota State Demographic Center, 2022).

The exact number of individuals subject to guardianship in Minnesota (or indeed anywhere in the United States) is unknown. Yet several estimates suggest that the number of individuals under guardianship in the United States has tripled since the mid 1990s (Blanck & Martinis, 2015; Jameson et al., 2015). As of 2013, Minnesota law requires guardians to register with the state (Minn. Stat. § 524.5-119) and one estimate indicates that as of May 2024, approximately 35,000 individuals were subject to guardianship (State of Minnesota Office of the Legislative Auditor, 2024). It is difficult to determine, however, whether this number reflect the total of guardianship cases since 2013 or the number of active registrants at a given point in time. Without valid and reliable data, it is impossible to know how many people are actively subject to guardianship in Minnesota.

³ While this measure is often used as an estimate of cognitive disability in the population, it is important to note that the question asks about cognitive “difficulty” rather than diagnosed disability (U.S. Census Bureau, 2021). Thus, it may be an overestimate of those at risk of guardianship in Minnesota.

⁴ These figures are from the authors’ own calculations using American Community Survey data from IPUMS USA (Ruggles et al., 2024).

While some adults with cognitive limitations or disabilities require assistance in making decisions about their lives – including decisions about finances, health care, and daily living – guardianship is likely an extreme step for many of them. Research demonstrates that people with greater self-determination are healthier, more independent and better able to recognize and resist abuse (Khemka et al., 2005; Martinis et al., 2023; Wehmeyer & Schwartz, 1997). Resorting to guardianship for these adults when it is not necessary results in a loss of rights and control over their own lives, as well as costs to the court systems that administer and monitor guardianship.

While some adults with cognitive limitations or disabilities require assistance in making decisions, guardianship is likely an extreme step for many of them. Resorting to guardianship when it is not necessary results in a loss of rights and control for those subject to it.

B. Overuse of the guardianship system

The lack of available data on guardianship, coupled with the difficulty of inferring the need for supported decision making among those at risk for guardianship, makes it difficult to quantify the extent to which need is addressed by existing systems. However, there is evidence from both research and practice that the guardianship system is overused. Factors contributing to overuse of the guardianship system include: expectations when children with disabilities reach 18 that a guardianship is needed; requests from health care professionals for guardianship related to hospital discharge; requests from long term care facilities for guardianship in order to admit a person to the facility; and lack of consent for increased services, or need for a medical decision for a person with neurocognitive disorder or mental illness. Lack of information and services related to less-restrictive arrangements, and a desire to mitigate risk among supporters of individuals with cognitive limitations or disabilities, are contributing to use of guardianship without review and implementation of less restrictive alternatives such as supported decision making.

At a system-level, studies on the transition of youth with disabilities to adulthood find evidence of a “school-to-guardianship pipeline” in which parents are actively encouraged to petition for guardianship over their children requiring special education services as those children approach the age of majority (Jameson et al., 2015; Millar & Renzaglia, 2002; Raley et al., 2023).⁵ Gaining guardianship over their children with intellectual or developmental disabilities is often presented to parents as a necessary step for them to continue to assist their children into adulthood (Jameson et al., 2015; Raley et al., 2023).

⁵ Millar and Renzaglia (2002) find evidence of this school-to-guardianship pipeline in their study of guardianship petition records in Michigan from 1994-1999, finding that the majority of guardianship petitions in their sample were filed for those 18 years of age, and that most of the guardianships awarded were plenary guardianships.

Encouragement to pursue guardianship is often given without full information about the nature and implications of guardianship and is usually not accompanied by information about alternatives such as supported decision making or durable power of attorney (Jameson et al., 2015; Raley et al., 2023).

There are also indications that health systems contribute to overuse of the guardianship system. In a hospital setting, when an individual is without a surrogate decision maker and appears to lack the ability to make decisions on their own behalf, guardianship may be initiated to facilitate movement to a different level of care (for example, to a nursing home) or to reduce the patient's length of stay at the hospital. Clinicians may recommend guardianship to protect against adverse consequences resulting from discharge, to lessen the likelihood of readmission, or to provide a higher level of care for a person who is not consenting to services or a move. In hospital and nursing home settings, there can also be incentives to pursue guardianship to ensure that payment for services is made (Hirschel & Smetanka, 2022).

Lack of information and services around supported decision making and other less-restrictive alternatives to guardianship often result in guardianship being the default path for individuals with intellectual or developmental disabilities or other cognitive difficulties. Lack of information contributes to overuse of guardianship at both organizational and individual/family levels, wherein institutions that serve individuals with disabilities fail to provide information about guardianship alternatives (Glen, 2020; Jameson et al., 2015; Raley et al., 2023), potentially contributing to family members' skepticism of the practice. Supported decision making services, such as facilitating a supported decision making agreement, providing guidance for supporters, and training for decision makers and supporters in supported decision making best practices are often not available within institutions that provide services to individuals with intellectual disabilities.⁶

Finally, there is anecdotal evidence that a desire among friends and family to mitigate risk is a factor contributing to overuse of the guardianship system. Friends and family members of an individual with intellectual or developmental disabilities may be risk averse when it comes to their loved ones and prefer to control certain types of risk (Bigby et al., 2022) or to execute a vision for their family member's life (Bigby et al., 2019). In such instances, individuals subject to guardianship are denied the opportunity to make choices that involve risk, supposedly for their own safety.

⁶ As a result, many pilot studies on supported decision making rely on non-profit or academic organizations to provide these types of services and support. Locating supported decision making education and services within institutions and agencies that already serve populations that would benefit from supported decision making could increase adoption of this less-restrictive alternative (Costanzo et al., 2022; Glen, 2020; The ARC of Northern Virginia, 2021).

C. Misperceptions about the guardianship system

Professionals who support individuals with cognitive limitations and disabilities in Minnesota point to several common misperceptions about guardianship that likely contribute to overuse of the system, including the perception that guardianship is a simple process, is inexpensive, eliminates the risk of harm and/or exploitation, and is easy to revoke.

First, guardianship is often perceived as a simple process. Yet while the concept of guardianship is relatively straightforward, the process of obtaining guardianship, acting as a guardian, and paying for a guardianship is considerably more complex.

For instance, establishing a guardianship requires petitioning the court to assign a guardian for an incapacitated adult. The petition must demonstrate that the adult is in fact incapacitated and that their

MISPERCEPTIONS ABOUT GUARDIANSHIP

- ⇒ Guardianship is simple to establish and manage.
- ⇒ Guardianship is inexpensive.
- ⇒ Guardianship eliminates the risk of harm and/or exploitation.
- ⇒ Guardianship is easy to revoke.

needs cannot be met using less-restrictive means. A court hearing to review the petition and collect testimony is held prior to establishing guardianship. If a guardianship is established, the guardian is responsible for carrying out the duties granted to them by the court as well as yearly reporting requirements (Minnesota Judicial Branch, State Administrator’s Office, 2024).

Once a guardianship is granted, decisions made by guardians may not be agreed upon by the person, their support system, or professionals. The guardian may have authority for decision making, but having a guardian does not assure the elimination of conflict or objections to the decisions the guardian makes, resulting in ongoing legal motions and cost to the person.

In addition, guardians are expected to ensure the safety and wellbeing of those they represent. However, guardians are decision makers and not service providers. Guardians are responsible to consent to services, but are not responsible for physically feeding, clothing, bathing, housing, or providing medical care or services. When services are not available, or when an individual subject to guardianship is physically resistant to medication, care or services, or not accepted by service providers due to behavior, a guardian is unable to ensure that the individual’s needs are met. Guardians are expected, but unable, to compensate for gaps in services and/or lack of ability to meet diverse needs within existing health and social service systems.

Guardianship is also costly, and the person subject to guardianship is responsible for the costs of the arrangement. Greater needs and/or conflict can result in greater costs to the individual subject to guardianship. If the person subject to guardianship lacks a friend or family member to serve as a guardian or lacks the means to pay for a private professional guardian, a public guardian is appointed,

and costs are paid for by taxpayers (see below for more information on the financial costs of guardianship).

In addition, as noted above, guardianship is sometimes seen as a tool for eliminating the risk that an individual will make “bad” choices and/or be financially exploited. However, guardianship neither removes all risk of adverse outcomes, nor does it always prevent financial exploitation. Although the scope and prevalence of abuse by guardians is unknown, there are numerous instances of wrongdoing by professional and nonprofessional guardians in governmental and media reports (Teaster et al., 2022; U.S. Government Accountability Office, 2010). Indeed, one of the entities funded by this grant (Rice County Guardianship Services) was established in 2010 after it was found that a local professional guardian mishandled cases and financially exploited individuals under their care (Schrade, 2011). While such statistics and anecdotes provide limited insight regarding the extent of malfeasance, they do provide evidence that the guardianship system cannot remove all risk.

Finally, individuals supporting those with cognitive limitations or disabilities may perceive guardianship to be more easily revokable than it actually is. Once an individual is declared to be incapacitated and is placed under guardianship by the court, it is very difficult to remove this status (Jameson et al., 2015). Restoration of rights and removal of guardianship requires yet another legal process involving court hearings and, even when the guardians themselves feel their powers are not required, restoration of rights may not be granted (Raley et al., 2023). Indeed, evidence suggests that guardianship is only rarely terminated (Jameson et al., 2015; Raley et al., 2023). Of special importance is the fact that guardianship is not terminated upon the death of the guardian. If a guardian dies before the individual in their care (as a parent of an adult child with disabilities is likely to do), the court will appoint a new guardian to replace them who may or may not be known to the individual under guardianship (Jameson et al., 2015).

D. Costs of the overuse of the guardianship system

There are multiple costs associated with overuse of the guardianship system. One of the most important costs is also one of the most difficult to measure: the cost to an individual who loses the right to make choices about their own lives. When instituted as a means of protecting against “bad” choices, guardianship not only robs individuals of learning opportunities, but also strikes at the very exercise of personhood in which making choices is inherent (Gooding, 2013). Research on supported decision making points to the “dignity of risk” as the right of a person to make informed choices about their own lives. When guardianship is not necessary, such an arrangement comes into conflict with personal autonomy and the dignity of risk (Gooding, 2013; Kohn et al., 2013).

Guardianship is also financially costly. Adults who have assets or income may be responsible for costs including court and filing fees, fees for the petition, fees for the adult’s own attorney, fees for the guardian’s attorney and potentially attorney fees for the attorney for others who object to the actions of the guardian. When a professional guardian is involved, the adult subject to guardianship is responsible for hourly fees for the professional guardian’s time. If the adult lacks the means to pay for the guardian, fees are paid by residents through the court or county social service budget.

The process of establishing guardianship may also result in costs to adjacent systems, such as the health system. There is evidence that adults who lack surrogate decision makers in hospital settings have longer hospital stays as well as adverse health complications after being cleared to depart, resulting in higher costs to the system as well as the individual. Such costs result from length of time and administrative bottlenecks associated with seeking guardianship on behalf of a hospital patient (Catlin et al., 2022; Nwakasi & Roberts, 2022; Ricotta et al., 2018).

Finally, overuse of the guardianship system is costly from an equity standpoint. Guardianship is the only decision making option available to people with cognitive or intellectual disabilities who are low income and have limited assets. When a person lacks the means to pay for a guardian, court costs and attorney fees are borne by the taxpayer. All other options, such as a health care agent or supported decision making arrangement, lack a government payment source. In addition, state legal service organizations supporting individuals with lower incomes have generally not prioritized providing assistance for those seeking guardianship or assistance with decisional support, in part due to the fact that the state provides attorneys to represent individuals at risk of guardianship in such cases.⁷ The options available to such individuals are considerably more limited and may create an increased risk of guardianship for those who cannot pay for less restrictive alternatives.

VI. Research on Supported Decision Making

A. What is Supported Decision Making?

Supported decision making is an approach to decision making for adults with intellectual or developmental disabilities or other cognitive impairments that provides them the support they need to be the ultimate decision makers in matters concerning their own lives (Gooding, 2013; Kohn et al., 2013). Supported decision making is an alternative framework to a surrogate decision making arrangement such as guardianship. A surrogate decision making framework takes a paternalistic view of individuals with disabilities, conceiving of them as incapable of making decisions for themselves and, therefore, needing another to make decisions for them for their own protection (Blanck & Martinis, 2015). Supported decision making treats the individual with intellectual or developmental disabilities or other cognitive impairments as the final decision maker, prioritizing individual autonomy (Gooding, 2013; Kohn et al., 2013).

Supported decision making is informed by the social model of disability, which suggests that disability is not inherent but results from the relationship between a person's capabilities and their environment, as

⁷ Note that Under the Older Americans Act, Title III funding for supportive services provides access to some funding for legal services for older adults in the most economic and social need. Under the OAA, priority legal services include defense of guardianship, which may include assisting older adults in removing unnecessary guardianship and helping to establish decisional support networks (Pub. L. No. 116-131, 2020).

well as the concept of relational autonomy, which holds that even those without cognitive impairments do not make decisions completely on their own (Gooding, 2013; Kohn et al., 2013; Peterson et al., 2020). Supported decision making seeks to provide individuals with disabilities and cognitive impairments the tailored assistance that they require to make decisions about their own lives rather than to remove their decision making rights and individual autonomy.

Supported decision making seeks to provide individuals with disabilities and cognitive impairments the tailored assistance that they require to make decisions about their own lives rather than to remove their decision making rights and individual autonomy.

Unlike the legal framework of guardianship, which often strips individuals of the majority of their individual rights, including the right to make medical, residential, and many other types of decisions (Blanck & Martinis, 2015; Karp & Wood, 2007; Kohn et al., 2013), supported decision making allows individuals to retain their legal and civil rights and make their own decisions. With supported decision making, decision makers are assisted by one or more supporters in understanding options, implications, and consequences of a decision and, if necessary, in communicating and interpreting their preferences to others (Blanck & Martinis, 2015; Gooding, 2013; Kohn et al., 2013).

There are many advantages to supported decision making. Supported decision making is a less restrictive alternative to guardianship for individuals with intellectual disabilities or cognitive impairments who require decisional support but for whom guardianship is unnecessary. Such arrangement may be particularly impactful for young people transitioning into adulthood. As noted above, there is evidence that parents of youth with disabilities are often encouraged to pursue guardianship without full information on guardianship or its alternatives. Education and information sharing about supported decision making, its uses and potential benefits may help divert some young adults from unnecessary guardianship.

Young people needing special education services transitioning to adulthood are not the only ones who may benefit from and avoid unnecessary guardianship through supported decision making. Supported decision making may be effective in adults with intellectual or developmental disabilities and adults experiencing a change in their cognitive abilities due to a traumatic brain injury, neurodegenerative condition, or other cognitive decline due to aging (Gooding, 2013; Kohn et al., 2013; Peterson et al., 2020; The ARC of Northern Virginia, 2021) .

By allowing individuals to maintain their rights while providing for a system of support to maintain or regain control in some areas of life, use of supported decision making may also have positive health benefits. Research has shown a positive relationship between one's sense of self-determination and well-being (Blanck & Martinis, 2015; Shogren et al., 2018). By enabling individuals to make decisions for themselves and retain some control over their own lives, supported decision making has the potential to

increase self-determination and therefore well-being (Kohn et al., 2013; Peterson et al., 2020; Shogren et al., 2018). These potential benefits are in stark contrast to guardianship wherein an individual loses many rights and is vulnerable to abuse (Blanck & Martinis, 2015; Karp & Wood, 2007; U.S. Government Accountability Office, 2010). While some supported decision making arrangements may also provide opportunities for abuse, a person-centered approach and a network of multiple supporters may mitigate these concerns (Kohn, 2021; Pell & Mulkern, 2016) .

The loss of civil rights and personal autonomy that accompany guardianship make it an extreme step and most state guardianship laws require that guardianship only be awarded when no alternatives are available (Martinis et al., 2023). Such provisions may make an investment in supported decision making seem superfluous. However, without a meaningful, actionable, and available alternative, guardianship is not truly a last resort, but rather a matter of course (Salzman, cited in Kohn et al., 2013). Supported decision making has shown promise as an alternative to guardianship (Costanzo et al., 2022; Pell & Mulkern, 2016; Purcal et al., 2017; The ARC of Northern Virginia, 2021), however, resources to learn about and facilitate supported decision making have been scarce (Jameson et al., 2015) and only three states (Minnesota, Maine, and Missouri), explicitly require supported decision making to be considered as a potential alternative before a petition for guardianship is granted (Martinis et al., 2023; Minn. Stat. 524.5-310).

B. Supported Decision Making Processes

While there are many possible models of supported decision making, all ought to have four basic characteristics: “(1) the individual retains legal decision-making authority; (2) the relationship is freely entered into and can be terminated at will; (3) the individual actively participates in decision-making; and (4) decisions made with support are generally legally enforceable” (Salzman cited in Kohn et al., 2013). Supported decision making models can be broadly categorized as formal or informal.

CHARACTERISTICS OF SUPPORTED DECISION MAKING MODELS

- ⇒ The individual retains legal decision-making authority;
- ⇒ The relationship is freely entered into and can be terminated at will;
- ⇒ The individual actively participates in decision-making; and
- ⇒ Decisions made with support are generally legally enforceable.

Source: (Salzman cited in Kohn et al., 2013)

Formal models of supported decision making require a written agreement that names decision makers and their supporters and gives legal rights and responsibilities to both parties. This model was adopted by the Canadian provinces of Prince Edward Island and British Columbia in the late 1990s (Gooding, 2013; Kohn et al., 2013) and U.S. states that have enacted supported decision making laws have followed suit (Kohn, 2021). As of October 2024, all supported decision making statutes in the United States require a formal written supported decision making agreement (Costanzo et al., 2022). Informal supported decision making models may not include a written agreement or, if they do, that agreement may not constitute a legal document. By not granting legal rights to supporters or third parties, an informal approach may mitigate opportunities for abuse within supported decision making relationships (Kohn, 2021) and may be more palatable to individuals who do not have family or close friends to call on as supporters (Costanzo et al., 2022).

Regardless of the model employed, supported decision making processes are highly individualized, complex, and context-dependent (Bigby et al., 2019, 2022; Browning et al., 2021; Douglas et al., 2015; Pell & Mulkern, 2016). In general, factors that influence the dynamics of supported decision making include: experiences and characteristics of the decision maker and their supporters; type and quality of the relationship between decision maker and supporters (i.e., the length and depth of the support relationship; is the supporter a family member, a friend, or a paid care provider); the nature of and context for the decision being made (i.e. what are the potential consequences of this decision for the decision maker and/or others); degree to which the supporters are guided by the desires and preferences of the decision maker; and whether and to what degree the supporter is cognizant of how their values and preferences might impact the decision maker's expressed desires and preferences and the degree to which they wield that influence to steer a decision's outcome.

C. Effectiveness of Supported Decision Making Programs

Though the idea of supported decision making has been popular for some time and has even already been codified into legislation both abroad and in some U.S. states (Browning et al., 2021; Gooding, 2013; Kohn, 2021), empirical evidence of the effectiveness of supported decision making is only beginning to become available.

In recent years, several supported decision making pilot projects have been designed, implemented, and evaluated. In these pilot projects, individuals who may benefit from supported decision making are recruited and, along with their supporters, are given education and training about supported decision making and supported decision making best practices. Most of these pilots also provide some level of ongoing support to decision makers and supporters as they try to use supported decision making in their lives. Supported decision making pilot projects have been implemented and evaluated in several countries as well as in several U.S. states; the aims, metrics of success, and rigor of evaluations vary (Then et al., 2024). While these pilot projects are an important first step to understanding the impacts of supported decision making, they are also limited by their relatively small sample sizes, and (in some cases) difficulty in recruiting and retaining participants.

Before discussing these pilot projects further, it is important to define what it means for supported decision making to be “effective.” Effectiveness of supported decision making may be judged on the basis of process (e.g., did supporters provide adequate support to the decision maker for them to understand all necessary information, express their desires and preferences, and make a decision that reflects those desires and preferences) or on the basis of outcomes (e.g., were the decisions arrived at via supported decision making a true reflection of the decision maker’s will, or did the use of supported decision making prevent or remove an unnecessary guardianship). The pilots reviewed by the authors were primarily interested in understanding the qualitative impact of supported decision making on the lives of decision makers, whether supported decision making could be a viable alternative to guardianship, and what implementations would serve this purpose best (Costanzo et al., 2022; Glen, 2020; Pell & Mulkern, 2016; Purcal et al., 2017; The ARC of Northern Virginia, 2021).

The Impact of Supported Decision Making on Decision Makers and Supporters

Interviews of pilot participants, both decision makers and supporters, revealed overall positive experiences with supported decision making (Glen, 2020; Pell & Mulkern, 2016; Purcal et al., 2017; The ARC of Northern Virginia, 2021). Decision maker participants reported outcomes such as increased self-confidence (Glen, 2020; Pell & Mulkern, 2016; Purcal et al., 2017; The ARC of Northern Virginia, 2021), improved decision-making skills (Pell & Mulkern, 2016; Purcal et al., 2017), a sense of greater independence and more control over their own lives (The ARC of Northern Virginia, 2021). Pilot projects that interviewed supporters found that the improvements in confidence and skills reported by the decision makers were often also observed by their supporters (Pell & Mulkern, 2016; The ARC of Northern Virginia, 2021).

Supported Decision Making as an Alternative to Guardianship

All of the supported decision making pilot projects reviewed by the authors concluded that supported decision making does represent a viable alternative to guardianship (Costanzo et al., 2022; Pell & Mulkern, 2016; Purcal et al., 2017; The ARC of Northern Virginia, 2021). Many of the pilot projects had participants that were able to successfully remove guardianship during the pilot (Costanzo et al., 2022; Pell & Mulkern, 2016; Purcal et al., 2017). or were in the process of attempting to have their guardianship removed (Costanzo et al., 2022; Glen, 2020). Pilots that interviewed supporters also found

that using supported decision making made supporters confident that the decision maker – including those that were currently under guardianship – could function without a guardian (Pell & Mulkern, 2016; The ARC of Northern Virginia, 2021). While several pilots also had the goal of diverting individuals from unnecessary guardianship, their degree of success in this effort is unclear from the literature (Costanzo et al., 2022; Glen, 2020).

These pilots further demonstrate that education, training, and facilitation efforts by project staff were essential to the successful adoption of supported decision making by participants and that finding a scalable solution to offering these services would be necessary for supported decision making to be an alternative to guardianship beyond the small scale of the pilot projects (Costanzo et al., 2022; Glen, 2020; Pell & Mulkern, 2016; Purcal et al., 2017; The ARC of Northern Virginia, 2021). All pilot projects reviewed by the authors contained a training component of some kind for participants to orient them to the concepts and values of supported decision making and participants universally reported these sessions being useful.

Several of the pilots also provided a high degree of facilitation and ongoing support of the supported decision making arrangements in their study (Costanzo et al., 2022; Glen, 2020; Pell & Mulkern, 2016; Purcal et al., 2017). Because every decision maker has different needs, preferences, supporters, and contexts, facilitating supported decision making proved to be a time- and resource-intensive process (Costanzo et al., 2022; Glen, 2020; Pell & Mulkern, 2016). While there is general agreement that providing these services at scale is a challenge, there is disagreement over whether government intervention or a paid service model is best suited to the purpose and spirit of supported decision making (Costanzo et al., 2022).

Several pilots also included an education component that targeted audiences beyond program participants to inform health care workers, disability advocates, legal professionals, and other service providers about supported decision making and its uses (Costanzo et al., 2022; Glen, 2020; Purcal et al., 2017; The ARC of Northern Virginia, 2021). Pilot projects in New York and in Georgia reported that their education and outreach work had led to legal professionals referring clients to project staff or consulting with project staff for cases they believed might benefit from supported decision making instead of guardianship (Costanzo et al., 2022; Glen, 2020.) This anecdotal evidence suggests that investment in outreach and education about supported decision making may be an important strategy for diverting individuals from unnecessary guardianship.

Available evidence suggests that supported decision making can be a viable alternative to guardianship that has positive impacts on decision makers' well-being. However, questions remain about how best to implement supported decision making as an alternative at a larger scale.

D. Supported Decision Making in Minnesota

Supported decision making may provide a useful alternative to guardianship in Minnesota for those who have capacity to participate in decision making, but still want or need support to make decisions about their lives. Unfortunately, there is insufficient data to know the extent of unnecessary guardianship in

Minnesota, what demand for alternative services might look like, and what models of less restrictive alternatives will serve Minnesota's needs best.

Organizations funded under this grant offer a snapshot of the types of organizations that can administer supported decision making programs and the types of interventions that may be able to reduce unnecessary guardianships and promote supported decision making. Five organizations were granted funding to promote supported decision making and/or provide supported decision making services across Minnesota. Grantees include two organizations that have been providing supported decision making services for many years (Center for Excellence in Supported Decision Making (CESDM) and Lutheran Social Service (LSS)), and three organizations in which supported decision making is a relatively new addition to service offerings, though it aligns with existing organizational approaches (Advocating Change Together (ACT), Adult Representation Services of Hennepin County (ARS), and Rice County Guardianship Services).

Table 1 includes an overview of organizations and grant-funded activities. Grant-funded activities range in type from education and outreach to organizations serving specific populations, training to professional groups, and direct services to adults with disabilities and older adults and their caregivers. Several grantees are using grant funds to develop or expand services to specific populations who may be at higher risk for guardianships (including youth transitioning into adulthood, individuals transitioning out of correctional facilities, and older adults without support networks in rural and urban areas) or cultural communities (such as Somali populations). Additional detail on grantee organizations and grant-funded activities is available in Appendix A.

The next section turns to an analysis of key findings related to the need and evidence for supported decision making programs, as well as early findings related to implementation and outcomes of grant-funded activities.

Overview of Supported decision making Grantees and Grant-Funded Activities

Advocating Change Together (ACT) is a constituent governed self-advocacy organization that educates and builds coalitions for people with intellectual and other disabilities who have not been recognized for their leadership abilities. Grant-funded activities for 2024-2025 include:

- Curriculum development and hosting of 12-week educational sessions for individuals with intellectual and developmental disabilities in the Metro and Duluth
- Development of supported decision making handbook to be distributed among self-advocates

Adult Representation Services (ARS), Hennepin County is a Hennepin County department that provides independent legal representation advocacy and support to clients experiencing poverty in civil matters where they are entitled to an attorney. ARS began representing individuals subject to guardianship in 2022. Grant-funded activities for 2024-2025 include

- Provision of training to ARS staff to build organizational knowledge and capacity in supported decision making

- Identification of current guardianship cases in which individuals may be better served by less restrictive options.
- Provision of training, education and outreach, and supported decision making services to youth-serving transition programs, Somali-serving organizations, Department of Corrections release planners serving individuals transitioning out of state-run correctional facilities, local hospitals, and other targeted professional groups.
- Provision of financial support to individuals with limited means seeking a health care agent to support legal alternatives to guardianship

Center for Excellence in Supported Decision Making (CESDM), Volunteers of America MN, supports older adults, adults with disabilities, their caregivers and communities, as well as the professionals who serve them, through consultation, direct services, and education, with the aim of seeking the balance between self-determination and safety. Grant-funded activities for 2024-2025 include

- Provision of training and technical assistance to professionals across services areas about the philosophy and benefits of supported decision making
- In-depth consultations with individuals, families, and professionals, providing resources to increase understanding around supported decision making and other alternatives, as alternatives to guardianship or conservatorship when appropriate
- Provision of direct, person-centered social work services to eligible individuals to access alternatives to guardianship, including navigating and helping build support systems to avoid or terminate existing guardianships.

Lutheran Social Service of Minnesota (LSS), Supported Decision Making, Guardianship Option, and Pooled Trust Division provides a continuum of guardianship and supported decision making services for adults with disabilities and older adults. Grant-funded activities for 2024-2025 include

- Provision of education, outreach, and supported decision making services to eligible youth with disabilities ages 16 and 17 and individuals transitioning out of correctional facilities.
- Provision of education and outreach, as well as assistance establishing or moving to less restrictive option or supported decision making arrangement (if desired) to older adults who are hospitalized under emergency guardianship and adults with disabilities ages 18-30 currently under guardianship.

Rice County Guardianship Services provides professional guardianship services to 105 individuals using person-centered practices. Grant-funded activities for 2024-2025 include

- Provision of supported decision making education and outreach to community partners
- Provision of supported decision making services to 8-10 individuals monthly in Rice County who do not qualify for guardianship services

VII. Key Findings

This section discusses high-level findings related to the guardianship system, need for supported decision making in Minnesota, and evidence for the effectiveness of supported decision making, as well as findings related to the early implementation and outcomes associated with grant-funded activities.

A. High-Level Findings

The analysis in this report is guided by two high-level questions: what is the need for supported decision making in Minnesota, and what evidence exists for the effectiveness of supported decision making programs? Before discussing these findings, we briefly highlight findings related to data on guardianship and supported decision making.

In Minnesota, a lack of data limits our understanding of the guardianship system and alternative approaches such as supported decision making.

While there is evidence that the guardianship system is overused, the lack of data on guardianship in Minnesota represents a significant obstacle to understanding the current system and the feasibility and likely effectiveness of alternative approaches such as supported decision making. Without valid and reliable data, it is not possible to know who is subject to guardianship, the characteristics of guardianship arrangements, and the extent to which those subject to guardianship would be better served by less restrictive alternatives. A lack of data also makes it difficult if not impossible to calculate the monetary costs of guardianship and the potential savings and/or costs of alternative approaches. This in turn limits the state's ability to make evidence-informed policy decisions related to services to support individuals with intellectual or developmental disabilities or other cognitive limitations in Minnesota.

To help fill gaps in knowledge, grantees are engaging in robust data collection activities. Data collected as part of this grant will provide a snapshot of supported decision making programs and their effectiveness in several different organizational contexts. However, rigorous data collection and analysis at a state level will be necessary to further inform recommendations about supported decision making programs.

Question 1. What is the need for supported decision making programs in Minnesota?

Although it is difficult to quantify the need for supported decision making programs in Minnesota, there is strong evidence that some individuals are being placed under guardianship even when a less restrictive alternative such as supported decision making might be used. Factors contributing to overuse of the guardianship system include the expectation and/or advice that children with disabilities need a guardian upon reaching adulthood; structures and practices within health systems that incentivize securing guardianship for those lacking a surrogate decision maker; requests from long term care facilities for guardianship in order to admit a person to the facility; lack of information and services related to less restrictive alternatives, and a desire to mitigate risk among supporters of individuals with

cognitive limitations or disabilities. Misperceptions about guardianship, including the perception and guardianship is simple or inexpensive, may also contribute to the application of guardianship in situations where an individual's needs might be met in a less restrictive arrangement.

Unnecessary guardianships result in a loss of rights and autonomy as well as monetary costs to the individuals and the systems with which they interact. To help prevent unnecessary guardianships, Minnesota law requires that less restrictive alternatives such as supportive decision making are considered prior to establishing a guardianship. In practice, however, there is limited information and fewer services related to less restrictive alternatives such as supported decision making. This is in part due to the fact that supported decision making is a relatively new approach for Minnesota. Yet it also due to funding: unlike guardianship, which has a government payment mechanism, no such payment mechanism exists for less restrictive alternatives such as supported decision making. Indeed, several grantees noted that they would have been unable to meet growing demand for supported decision making services absent funding from this grant.

Overuse of the guardianship system, the lack of information and services related to less restrictive alternatives, and the considerable costs to individuals and systems when unnecessary guardianships are established, suggest a need for Minnesota to continue investing in less restrictive alternatives to guardianship, such as supported decision making.

Question 2. What evidence exists for the effectiveness of supported decision making programs?

Although supported decision making has been codified into legislation both abroad and in some U.S. states, empirical evidence of the effectiveness of supported decision making is only beginning to emerge. Evidence from several recent pilot projects in the U.S. suggests that supported decision making can be a viable alternative to guardianship that has positive impacts on decision makers' well-being, including increased self-confidence, improved decision making skills, and a sense of greater independence and control over one's life.

Pilot projects also demonstrate that education, training, and facilitation efforts by project staff are critical to the successful adoption of supported decision making by participants. In addition, education that targets professionals beyond program participants to inform health care workers, disability advocates, legal professionals, and other service providers about supported decision making and its uses also represents an important activity to avoid unnecessary guardianships.

Because every decision maker has different needs, preferences, supporters, and contexts, facilitating supported decision making proved to be a time- and resource-intensive process. While there is general agreement that providing these services at scale is a challenge, there is disagreement over whether government intervention or a paid service model is best suited to the purpose and spirit of supported decision making (Costanzo et al., 2022).

B. Findings Related to Grantee Activities and Outcomes

Question 3. How does the distribution of grants aim to promote racial and geographic diversity in populations served?

Grantees were selected to represent a diversity of geographic locations and populations served. With respect to geography, two organizations (CESDM and LSS) are statewide organizations that provide training (CESDM only), education, outreach, and direct services to individuals throughout Minnesota. Two counties are funded by the grant, one of which is based in the metro (ARS at Hennepin County) and one of which is based in Greater Minnesota (Rice County Guardianship Services). Finally, one grantee (ACT) will be hosting educational cohorts in the metro and Duluth.

In addition, several grantees are prioritizing cultural communities and/or targeting systems that disproportionately serve non-white individuals or communities. For example, ARS is prioritizing outreach to Somali-serving organizations with the aim of increasing referrals to ARS to serve Somali individuals. Two grantees (ARS and LSS) are focusing on building relationships and/or increasing referrals from the Department of Corrections, which disproportionately serves Black, Indigenous, and People of Color (BIPOC).

Question 4. What strategies/programmatic changes have grantees adopted to increase utilization of supported decision making and reduce or avoid more restrictive forms of decision making?

Strategies and programmatic area changes are divided into three types of activities: training, education/outreach, and direct client service. Training involves formal presentations to groups of professionals that interact with individuals currently or potentially under guardianship. Education/outreach includes activities aimed at raising awareness of supported decision making to individuals currently or potentially under guardianship as well as their supporters (family members, friends, professional or public guardians, and other professionals). Direct service activities involve the provision of supported decision making services and/or direct support in the restoration of rights.

These activities reflect innovative strategies to increase the use of supported decision making through intervention at multiple levels.

Systems-Level. Systems-level activities aim to intervene upstream to prevent unnecessary guardianships before they are put into place. Grantees are prioritizing activities that raise awareness of supported decision making and/or intervene to divert individuals from unnecessary guardianships. Key systems that promote guardianship or operate as “pipelines” into guardianship include the education, legal, hospital/health systems, as well as, potentially, the justice system.

Examples of grantee activities intended to raise awareness of supported decision making and/or intervene in such systems include:

- Adult Representation Services (ARS) at Hennepin County is conducting education and outreach to youth-serving transition programs, MN Department of Corrections, local Hennepin County

hospitals, and Minnesota-based attorneys. ARS also intends to provide services to eligible individuals in those systems. The goal of such activities is to intervene upstream *before* individuals are subject to plenary guardianship, with the aim of avoiding unnecessary guardianships, preventing loss of liberty, and eliminating the costs associated with reducing or removing unnecessary guardianships.

- Lutheran Social Service (LSS) is conducting education and outreach to organizations who serve youth with disabilities, hospitals statewide, and those working with incarcerated populations. The goal of such activities is to prevent unnecessary guardianships for youth with disabilities who are not yet under adult guardianship, individuals who are hospitalized under emergency guardianship, and those at risk of guardianship who are exiting correctional facilities. LSS also intends to provide supported decision making services to eligible individuals who are referred from systems involving youth, hospital patients, and/or justice-involved individuals.

Organizational- and Individual/Family Level. At the organizational and individual/family level, grantees are focusing on increasing their organizational capacity, and that of partners, to raise awareness of, and provide services related to, supported decision making as an alternative to guardianship.

Activities at the organizational level include outreach to community partners as well as hiring and training of staff. Activities at the individual/family level include direct client service to individuals at risk of guardianship, individuals currently under guardianship, and supporters. These activities aim to provide information and increase awareness of supported decision making and provide support to individuals who wish to avoid, reduce, or eliminate a guardianship. Services typically take the form of intensive case management to help individuals identify and put into place systems of support that allow them to retain some or all of their decision making rights with the support of others.

Examples of grantee activities in this area include the following:

- Expansion of the Guardianship Information Line by CESDM offers a resource for professionals who work with individuals with cognitive limitations or disabilities in addition to acting as a resource for those individuals and their supporters. The supported decision making grant is funding an expansion of the service to enable more rapid response time and greater staff capacity to work with callers on the specifics of their case and/or question.
- In Rice County, increased awareness of supported decision making through educational sessions with staff across the county, as well as expanded ability to provide supported decision making services through the hiring of new staff to provide supported decision making services.
- For LSS, expanded ability to provide supported decision making and person-centered services to at-risk populations (youth age 16-17, adults in hospital settings, and adults exiting correctional facilities) through the hiring and training of new staff.
- For LSS, proactively identifying individuals currently under LSS guardianship who may be better served by a supported decision making arrangement.
- Hosting of educational sessions for individuals with disabilities and their supporters by ACT to raise awareness of supported decision making.

Question 5. How do these strategies and programmatic changes align with research and best practices on supported decision making?

As noted above, empirical evidence on supported decision making and its effectiveness is only beginning to emerge. Thus, it is difficult to assess the extent to which grantee activities are aligning with research and best practices on supported decision making.

However, it is clear that grantees are engaging with the guardianship system at multiple levels. For instance, grantees are engaging at a systems level to divert individuals from unnecessary guardianships, engaging at an individual/family level with those currently under guardianship to assess the possibility of less restrictive alternatives, and increasing education and awareness of supported decision making among organizations and professionals who work with youth and adults with intellectual disability or cognitive limitations, as well as organizations and professionals in systems with limited information related to supported decision making (such as correctional systems). Engagement at multiple levels and in multiple ways is also a feature of supported decision making pilots conducted in recent years.

The lack of data on guardianship and the need for supported decision making makes it difficult to assess the extent to which grantee activities are effectively targeting and addressing need in Minnesota. Yet there is evidence that grantees are responding to measurable demand within the constituencies they serve. For example, CESDM has seen an increase in the number of calls to the Guardianship Information Line and has responded by adding a new staff member to increase capacity and shorten the wait time in responding to calls. Rice County has seen an increase in the number of residents who require decisional support but do not qualify for the county's guardianship service and has responded by building organizational capacity and hiring staff to deliver supported decision making services.

In addition, grantee activities related to reducing unnecessary guardianship and promoting supported decision making are in many cases quite innovative, including (but not limited to): intervening 'upstream' to prevent unnecessary guardianships among youth transitioning into adulthood and those hospitalized under emergency guardianships; developing new interventions for engaging with correctional systems; and assessing an organization's own caseload of guardianship cases to establish whether individuals can be better served with less restrictive alternatives. Implementation of such models will provide important feedback for Minnesota regarding different types of approaches for reducing unnecessary guardianships and promoting supported decision making.

Question 6. What are the intended outcomes of such strategies and programmatic changes?

Short-term outcomes include increased awareness of supported decision making and willingness to act on new information among professionals, community partners, and individuals currently or potentially subject to guardianship and their supporters. Training offered by grantees aims to provide actionable information to professionals in systems that act as "pipelines" into guardianships, while education and outreach sessions aim to increase knowledge and willingness to pursue less-restrictive options among individuals at risk or subject to guardianship and their supporters.

For individuals and their supporters, short-term outcomes also include utilization of supported decision making (whether formal or informal) rather than guardianship, and/or restoration of decision-making rights in at least some areas. Supported decision making arrangements may be utilized prior to establishing a guardianship (diversion) or with an individual who transitions out of an unnecessary guardianship. Short-term outcomes also include individual satisfaction with the supported decision making arrangement.

Long-term outcomes include increased awareness of supported decision making and willingness to act on new information across systems involved in establishing or recommending guardianship (including education, health, and legal systems), as well as among individuals currently or potentially subject to guardianship and their supporters. Long-term outcomes also include changes in professional practice to ensure that guardianship is not a default option, but rather is considered only after less-restrictive options including supported decision making have been discussed and explored, thereby bringing professional practice in line with Minnesota law.

It is important to note that, with the exception of client satisfaction, direct service outcomes of grant-funded activities do *not* include the impacts of supported decision making arrangements for individuals, nor do they include characteristics of the supported decision making arrangements (formal versus informal, type of supporters (professional or family/friend), etc.). In other words, “success” is defined exclusively by the establishment of a supported decision making arrangement and the restoration or maintenance of rights for individuals currently or potentially under guardianship.

While grantees are only in the first few months of their supported decision making grants, there is evidence that activities are associated with positive outcomes across multiple indicators. Table 1 provides an overview of activities, outputs, and outcomes achieved in the first grant quarter (July 1, 2024 – September 30, 2024).

During the first quarter, six grant-funded training sessions were hosted by ARS and CESDM, serving approximately 128 individuals across multiple organizations, including internal trainings to ARS, as well as case managers in Volunteers of America’s Vona Center for Mental Health, staff at ARC Minnesota, and attendees at the Minnesota CLE Elder Law Institute. Feedback from external trainings was overwhelmingly positive: 100 percent of respondents who attended ARS’ internal staff training (N=11) reported increased knowledge of CESDM and 100 percent of respondents from the Vona Center for Mental Health and ARC Minnesota (N=19) reported an increased level of confidence in promoting or discussing supported decision making as a result of the training.

Also in the first quarter, grantees expanded outreach, education and training activities. A variety of activities occurred across grantees and between grantees and community partners, including partners serving multicultural communities, seniors, and those in education, health, and correctional systems. Just under 40 individuals participated in 15 education sessions across three grantees. Participants generally included professionals serving those currently or potentially under guardianship, including professional guardians, attorneys, high school social workers, and community partners.

Activity	Output/Outcome
Internal staff trainings	60 attendees across 3 trainings 100% surveyed reported increased knowledge of material
External trainings to professionals	68 attendees across 3 trainings/ presentations 100% surveyed (N=19) reported increased level of confidence in promoting/discussing supported decision making
Outreach activities	Multiple outreach activities conducted. Populations reached include older adults and professionals serving those impacted by guardianship (guardians, attorneys, high school social workers, and community partners)
Educational sessions	41 individuals reached across 15 educational sessions. Participants generally included professionals serving those impacted by guardianship
Education/consultation via Guardianship Information Line (GIL)	297 individuals received in-depth individualized consultation via the GIL (1 of 2 FTE funded by grant) ⁸
Direct client service	<p>16 individuals served across four organizations providing direct client service.</p> <p><i>Note that because the grant is in its early stages, most grantees were focused on hiring, onboarding, and/or setting up connection points, communication materials, and referral processes to facilitate direct service.</i></p> <p>Outcomes of direct service intervention include:</p> <ul style="list-style-type: none"> • One health care directive executed in lieu of guardianship for youth under age 17 • Four guardianships terminated • One person moved to a more person-centered guardianship w/restoration of some rights • One person diverted from guardianship into an informal supported decision making arrangement <p>93 individuals with existing guardianships received outreach, information, and/or support involving termination of guardianship, provision of supported decision making support, and/or restoration of some rights or reduction in guardianship.</p>

Table 1. Activities, Outputs, and Outcomes (July 1, 2024 – September 30, 2024)

Just under 300 individuals received individualized consultation via CESDM's Guardianship Information Line (GIL) during the first grant quarter. Demonstrating its reach, the GIL received calls from 40 counties as well as callers outside of Minnesota. Supported decision making grant funding is supporting one of two full-time staff supporting the GIL. The additional staff member has resulted in a reduction in wait time for callers from 2-3 business days to 1-2 business days, as well as increased attention to each case. Feedback from callers is overwhelmingly positive, and includes:

- *Thank you very much for your assistance! Will definitely call again whenever needed. You were the only ones that called back (as she had tried county, and others) thank you so much for your response.*
- *This has been the most helpful information [I have] received. Thank you for the useful tools and suggestions that keep dignity and respect in mind for [my] mom.*
- *You have been wonderful...I wasn't as happy talking to other agencies as much as I was when calling here. You have been so helpful, kind and informative. Thank you.*

With respect to direct client service, it is important to reiterate that during the first grant quarter, most grantees were engaged in hiring and onboarding staff to directly serve clients, as well as setting up referral processes within and across organizations. Thus, while only 16 individuals were provided direct services during this period, we can expect this number to rise over the course of the grant. Notable outcomes for clients served include:

- Health care directive executed in lieu of guardianship for youth under age 17
- Guardianships terminated
- Movement to a more person-centered guardianship w/restoration of some rights
- Diversion from guardianship into an informal supported decision making arrangement

Finally, 93 individuals with existing guardianships received outreach, information, and/or support involving termination of guardianship, provision of supported decision making support, and/or restoration of some rights or reduction in guardianship.

Question 7. What are emerging organizational- and systems-level successes and challenges to implementation?

Grantees report considerable success in hiring and training of additional staff, developing materials to support education, outreach, and training, and outreach to community and professional partners.

The supported decision making grant is supporting the expansion of direct client work for four of five grantees (ARS, CESDM, LSS, and Rice County), three of whom are hiring new staff or creating new positions. Two of these have been successful in hiring and onboarding new staff and report ease in educating and training staff within their own organizations, where supported decision making aligns with

⁸ CESDM was previously awarded a separate grant from DHS to implement work substantially similar to the work funded under this SDM grant. Work funded under the previous grant feeds into CESDM's activities for this grant, contributing to its effectiveness in providing services via the GIL as well as through intensive direct service.

each organization's person-centered approach to guardianship. One has successfully reconfigured the work of a current staff member to focus on direct supported decision making client service.

Four of five grantees are expanding education and outreach activities under the supported decision making grant. Two of the grantees (ACT and CESDM) have brought on additional staff/facilitation support to expand educational activities. All grantees have made considerable progress in developing curriculum, information sheets, draft communications, website content, and presentations.

The development of materials has been accompanied by increased outreach within and across organizations to facilitate referrals and collaborative work. Grantees report multiple meetings with one another and with community and professional partners. Examples include:

- In September 2024, ARS reported successful outreach and engagement with the Multicultural Autism Action Network, which serves communities including Somali, Oromo, African American, Hmong American, Asian/Pacific islander, and Indigenous communities, and a plan to host an educational event together in Spring 2025.
- In August and September 2024, LSS had multiple meetings with individuals and organizations involved with aging adults to discuss practices and tools to proactively address the need for health care directives and agents, how to adopt practices/tools in rural settings, and tools for working with adults in hospital settings looking to reduce guardianship after it has been applied.

Interviews with grantees indicate that implementation challenges involve building connections with partners in some systems and determining how best to challenge the narrative of guardianship as the default option. Grantees note that while they have had some success in connecting with professional partners in the legal system, organizations that work with individuals with disabilities, and within their own organizations, it has been more difficult to build connections with educational, hospital, and prison systems, for varying reasons. One grantee reports that within the educational system, the instinct to protect young people is quite strong, creating a resistance among some educators to supported decision making and a preference for guardianship. Another grantee reports encountering resistance from staff in hospital settings, where there is limited pressure to pursue supported decision making arrangements when the incentive structure favors guardianship to safely house a patient lacking a health care directive or surrogate decision maker. Barriers to engaging with corrections systems arise from a general lack of understanding of the landscape and the interventions that would be most useful for this population.

Finally, several grantees discuss the difficulty of communicating about, and convincing partners of the value of, supported decision making as an alternative to guardianship. While grantees generally agree that lack of information is a key barrier to the adoption of supported decision making, one grantee also discusses the difficulty of communicating about supported decision making, as it is perceived as considerably more complex than guardianship. As noted above, grantees report that protective instincts and incentive structures lead some service providers to favor guardianship over supported decision making in educational and health settings. Another notes the difficulty of convincing individuals of the value of supported decision making for older adults.

VIII. Conclusions, Recommendations, and Next Steps

As the first of two legislative reports on the activities funded under the supported decision making grant program (see Laws of Minnesota, 2023, Chapter 61, Article 1, Section 61), this document has reviewed the available evidence on Minnesota's guardianship system and supported decision making as an alternative to guardianship. It has presented evidence related to the early implementation and outcomes associated with activities conducted by five organizations funded under the grant.

While legislative recommendations are perhaps premature given the early stage of the grant, several findings are clear from the review of existing research and analysis of early grant-funded activities. These include:

- ⇒ In Minnesota, a lack of data limits our understanding of the guardianship system and alternative approaches such as supported decision making. Making evidence-informed decisions about guardianship and the implementation and effectiveness of less restrictive alternatives will require Minnesota to invest in more rigorous data collection and analysis.
- ⇒ Overuse of the guardianship system, lack of information and services related to less restrictive alternatives, and the considerable costs to individuals and systems when unnecessary guardianships are established, suggests a need for the state of Minnesota to continue investing in less restrictive alternatives to guardianship, such as supported decision making.
- ⇒ While research on supported decision making is still emerging, organizations funded by this grant are engaging in an array of different activities to reduce unnecessary guardianship and promote supported decision making. Many of these activities have been adopted by innovative pilot programs aimed at understanding supported decision making and its effectiveness. Data collected over the course of this grant will provide valuable information to Minnesota about the needs, obstacles, and factors contributing to the effectiveness of supported decision making programs across the state.
- ⇒ Finally, organizations funded by this grant are pursuing innovative approaches to reducing guardianship and promoting supported decision making. Such activities may require additional time and funding to better understand their implementation and effectiveness in reducing unnecessary guardianships and promoting supported decision making across Minnesota.

The next legislative report, due in December 2025, will focus on the implementation and outcomes associated with grant funded activities. The second report will also be able to draw upon additional activities related to guardianship in Minnesota, including a report by the Minnesota Office of the Legislative Auditor, due in 2025, and the activities of Minnesota's recently established Guardianship Task Force.

IX. Appendix A: Grantee Organizations and Programs

Advocating Change Together (ACT)

Advocating Change Together (ACT) is an organization that focuses on self-advocacy education and coalition-building for people with intellectual and other developmental disabilities. Since 1979, ACT has led programming, training, and engagement activities to help those with disabilities better understand disabilities rights and justice and develop tools for making choices about their own lives. The organization is governed by a Board of Directors, 75 percent of whom have a disability. ACT serves approximately 2,500 people with disabilities across Minnesota.

Empowering those with disabilities to make choices about their own lives using person-centered approaches is core to ACT's mission and the organization has been delivering programming consistent with supported decision making for decades. It is the only grantee focused on delivering self-advocacy education and training directly to those with disabilities.

Supported decision making grant funding will enable ACT to expand its existing curriculum focused on Goal Setting for Individuals with Intellectual/Development Disabilities to include supported decision making in a range of areas such as housing, services, and transportation. With grant funding, ACT will host 12-week sessions with cohorts of 10-12 people in the Metro and Duluth. Feedback from the sessions will enable ACT to develop a handbook for supported decision making in collaboration with interested participants in each cohort. The handbook will be distributed to self-advocates to provide additional information and links to existing resources related to supported decision making.

Adult Representation Services, Hennepin County

Adult Representation Services (ARS) is a Hennepin County department that provides independent legal representation, advocacy and support to clients experiencing poverty in civil matters where they are entitled to an attorney. ARS was created in 2018 to provide representation and support to parents in child protection cases. Since that time, the scope of the agency has expanded to include issues related to housing and eviction, immigration, and guardianship. ARS began representing residents subject to guardianship in 2022. Between 2022 and 2023, ARS served more than 1350 clients in guardianship cases.

ARS's model is unique in Minnesota in that it provides legal representation for persons currently or potentially subject to guardianship in Hennepin County. By having attorneys as employees, ARS can standardize service delivery, offer consistent training to staff, and monitor service quality. It also facilitates connection to other types of services and supports administered by or available through the county.

Recently, ARS has prioritized upstream (or pre-petition) services to individuals for whom guardianship is considered, but who may be better served by a less-restrictive option. The intent of this shift is to connect with a

person in need of support *before* a guardianship is established. Such a shift would enable the person to retain their rights in a less restrictive or supported decision making context, while eliminating costs associated with establishing and monitoring an unnecessary guardianship (including future costs associated with ending a guardianship).

Supported decision making grant funding will allow ARS to expand offerings in two areas: (1) training, education, and outreach to expand use of SDM as a less-restrictive alternative to guardianship, and (2) pre-petition legal services to avoid guardianship when appropriate. These offerings aim to disrupt “pipelines” that lead individuals with cognitive or intellectual disabilities into guardianship without appropriate consideration of less-restrictive options.

With grant funding, ARS will expand training, education, and outreach to targeted groups serving individuals who are at risk for guardianship. ARS also plans to use grant funds to identify current guardianship cases that may be better served by less -restrictive options. Finally, ARS will use grant funding to provide financial assistance to individuals who seek a health care agent but lack the means to pay for this service.

Lutheran Social Service of Minnesota Supported Decision Making, Guardianship Options, and Pooled Trust

Lutheran Social Service (LSS) is a non-profit organization that was the first to offer professional guardianship services in Minnesota beginning in 1988. The Lutheran Social Service (LSS) of Minnesota Supported Decision Making, Guardianship Options, and Pooled Trust division currently provides a continuum of guardianship and supported decision making services for adults with disabilities and older adults. LSS provides guardianship services to approximately 1,500 individuals with disabilities and older adults throughout the state, representing approximately half of all individuals under professional guardianship in Minnesota. Prior to grant funding, LSS was supporting approximately 50 individuals with supported decision making services, primarily under a private-pay model.

LSS prioritizes a person-centered approach to guardianship and works with those under guardianship to restore their rights when appropriate. Twenty-three people had their rights restored in the last year. In addition to guardianship services, LSS is working to intervene at critical junctures to divert individuals from unnecessary guardianship. Specifically, youth with disabilities ages 16-17 and their families, and older adults in the hospital who are under an emergency guardianship, and those transitioning out of incarceration are targeted for supported decision making services in place of a restrictive guardianship. This final population is an especially under-served group when it comes to guardianship and support services and represents a new service area under this grant.

Grant funding will allow LSS to significantly expand outreach, education, and provision of supported decision making services to divert individuals from guardianship where appropriate. With grant funding, LSS anticipates serving 40 youth with disabilities per year and 50 older adults per year, as well as approximately 160 adults currently on guardianship who may be better served by a less-restrictive option. An additional outcome of grant-funded activities is the identification of invention points for working with individuals transitioning out of correctional facilities.

The experience and expertise of LSS positions it as a leader in providing supported decision making services, education, and outreach throughout Minnesota. As a leader in this area, LSS is also engaging in robust data collection efforts to better understand the need for supported decision making services, outcome of supported decision making-related interventions, and implications for policy and practice in Minnesota.

Rice County Guardianship Services

Rice County Guardianship Services (Guardianship Services) provides professional guardianship services to adults in Rice County who qualify for guardianship and are at risk of harm without such an intervention, have limited income, and have no person available to act as a supporter. Guardianship Services was established in 2010, after a local guardian was charged with defrauding individuals under her care. Since that time, Rice County Guardianship Services has grown from one full-time and one part-time social worker to a team of six that together provide guardianship services to 105 individuals in Rice County.

While Guardianship Services was initially established as a standalone service for those in need of assistance from a guardian or conservator, in practice it became a division that works across county departments to provide person-centered support for those under its care. Rice County is one of the few counties in Minnesota that directly provides professional guardianship services, with the County bearing much of the cost.

In recent years, Guardianship Services has observed an increasing number of cases that do not meet the criteria for restrictive guardianship, but are nevertheless in need of some level of service. In 2021, these individuals numbered five; in 2023, ten cases reviewed by Rice County did not require guardianship, but still had an unmet need for support. With supported decision making grant funding, Guardianship Services is working to meet this need by expanding its offerings to include supported decision making services.

Guardianship Services has two areas of work funded by the supported decision making grant. The first is the provision of supported decision making services to adults in Rice County who require support in making decisions but who do not require a restrictive guardianship, and the second is an outreach and education initiative within and across the county.

First, supported decision making grant funding will expand Rice County's ability to offer supported decision making services. Funding will enable the hiring of two full-time social workers to deliver supported decision making services to adults who would benefit from support but do not meet the criteria for guardianship. With grant funding, Guardianship Services will build upon existing tools and practices to support its ability to deliver supported decision making services. The new positions, together with existing staff, will serve a minimum of 8-10 adults in the community per month.

Guardianship Services will also organize and provide training and education to community members and internal and external partners about supported decision making and the services it provides. Potential community partners include the Third Judicial District, Rice County Public Health, Rice County Attorney's office, guardianship attorneys representing community cases, Community Based Coordinators with the jail, and the Somali Resettlement Center.

Center for Excellence in Supported Decision Making (CESDM), Volunteers of America - Minnesota

Volunteers of America - Minnesota is a nonprofit health and human services organization that provides a wide range of services to support the well-being of Minnesotans in need. In 2016, VOA-MN opened its Center for Excellence in Supported Decision Making (CESDM), which expanded upon a previous area called VOA-MN Protective Services. Since that time, CESDM has supported older adults and adults with disabilities, as well as their caregivers and professionals who serve them, with education, consultation, and direct services, with the promoting supported decision making and other options to avoid unnecessary guardianship while preserving rights and choice; using best practices when guardianship is necessary; and promoting client rights in guardianship arrangements. CESDM's grant-funded activities fall into two broad categories:

1. Providing individuals, families, and professionals with the resources and expertise to choose supported decision making as an alternative to guardianship or conservatorship when appropriate, as well as in-person decision making navigation to those seeking person-centered decisional support.
2. Educating and advocating to professionals across services areas about the philosophy and benefits of supported decision making

Services to Individuals and Families

CESDM has two primary programs for providing services to individuals and families, including a Guardianship Information Line and Decision Making Navigator Service. Both are existing programs that have been expanded using supported decision making grant funds.

The Guardianship Information Line (GIL) is a program that provides in-depth phone consultation with families, professional caregivers, and individuals. In 2023, the GIL provided nearly 1400 callers with information, consultation, and referrals pertaining to individual's decision-making capacity, guardianship and conservatorship, less-restrictive alternatives, and system navigation. Attesting to the need for this program, CESDM records show a steady increase in the number of calls to the GIL, from 633 in 2019 to 1378 in 2023.

CESDM's Decision-Making Navigator Service provides direct social work services to individuals, families, and professionals to help them assess options available to assist individuals with cognitive or intellectual disabilities, including supported decision making and other less-restrictive alternatives to guardianship and conservatorship. Under this program, services are available to individuals and families who lack the financial or personal resources to pursue resolution without assistance.

Services to Professionals

CESDM has become the preeminent source for trainings and expertise related to SDM in Minnesota. Staff have developed an array of general and specific trainings that have expanded the knowledge base for professionals and community members that interact with and influence Guardianship/Conservatorship and SDM arrangements. These trainings focus on promoting supported decision making, avoiding unnecessary

guardianships, the potential harms, costs, and unintended consequences of guardianships, rights of people subject to guardianship, and balancing the dignity of risk with safety/vulnerability concerns.

With grant funding, CESDM will continue and expand training and advocacy focusing on providing individuals, families, and professionals with the knowledge and tools they need to make informed decisions that balance the health, safety, well-being, and independence of community members across the State.

X. References

- Bigby, C., Douglas, J., Smith, E., Carney, T., Then, S.-N., & Wiesel, I. (2022). Parental strategies that support adults with intellectual disabilities to explore decision preferences, constraints and consequences. *Journal of Intellectual & Developmental Disability, 47*(2), 165–176.
<https://doi.org/10.3109/13668250.2021.1954481>
- Bigby, C., Whiteside, M., & Douglas, J. (2019). Providing support for decision making to adults with intellectual disability: Perspectives of family members and workers in disability support services. *Journal of Intellectual & Developmental Disability, 44*(4), 396–409.
<https://doi.org/10.3109/13668250.2017.1378873>
- Blanck, P., & Martinis, J. G. (2015). “The Right to Make Choices”: The National Resource Center for Supported Decision-Making. *Inclusion, 3*(1), 24–33. Education Source.
- Browning, M., Bigby, C., & Douglas, J. (2021). A process of decision-making support: Exploring supported decision-making practice in Canada. *Journal of Intellectual & Developmental Disability, 46*(2), 138–149.
<https://doi.org/10.3109/13668250.2020.1789269>
- Catlin, C. C., Connors, H. L., Teaster, P. B., Wood, E., Sager, Z. S., & Moye, J. (2022). Unrepresented Adults Face Adverse Healthcare Consequences: The Role of Guardians, Public Guardianship Reform, and Alternative Policy Solutions. *Journal of Aging & Social Policy, 34*(3), 418–437.
<https://doi.org/10.1080/08959420.2020.1851433>
- Convention on the Rights of Persons with Disabilities, 2515 Treaty Series 3 (2006).
- Costanzo, C. E., Glen, K. B., & Krieger, A. M. (2022). Supported Decision-Making: Lessons from Pilot Projects. *Syracuse Law Review, 72*(99), 99–163.
- Douglas, J., Bigby, C., Knox, L., & Browning, M. (2015). Factors that Underpin the Delivery of Effective Decision-making Support for People with Cognitive Disability. *Research and Practice in Intellectual and Developmental Disabilities, 2*(1), 37–44. <https://doi.org/10.1080/23297018.2015.1036769>
- Glen, K. B. (2020). Supported Decision-Making from Theory to Practice: Further Reflections on an Intentional Pilot Project. *Albany Government Law Review, 13*, 94–168.
- Gooding, P. (2013). Supported Decision-Making: A Rights-Based Disability Concept and its Implications for Mental Health Law. *Psychiatry, Psychology and Law, 20*(3), 431–451.
<https://doi.org/10.1080/13218719.2012.711683>
- Hirschel, A., & Smetanka, L. (2022). The Use and Misuse of Guardianship by Hospitals and Nursing Homes. *Syracuse L. Rev, 72*(255).
- International Covenant on Civil and Political Rights, 999 Treaty Series 171 (1966).

- Jameson, J. M., Riesen, T., Polychronis, S., Trader, B., Mizner, S., Martinis, J., & Hoyle, D. (2015). Guardianship and the Potential of Supported Decision Making With Individuals With Disabilities. *Research and Practice for Persons with Severe Disabilities*, 40(1), 36–51. <https://doi.org/10.1177/1540796915586189>
- Karp, N., & Wood, E. F. (2007). Guardianship Monitoring: A National Survey of Court Practices. *Stetson Law Review*, 13(1).
- Khemka, I., Hickson, L., & Reynolds, G. (2005). Evaluation of a Decision-Making Curriculum Designed to Empower Women With Mental Retardation to Resist Abuse. *American Journal on Mental Retardation*, 110(3), 193. [https://doi.org/10.1352/0895-8017\(2005\)110<193:EOADCD>2.0.CO;2](https://doi.org/10.1352/0895-8017(2005)110<193:EOADCD>2.0.CO;2)
- Kohn, N. A. (2021). Legislating Supported Decision-Making. *Harvard Journal on Legislation*, 58. <https://doi.org/10.2139/ssrn.3768684>
- Kohn, N. A., Blumenthal, J. A., & Campbell, A. T. (2013). Supported Decision-Making: A Viable Alternative to Guardianship? *Penn State Law Review*, 117(4), 1111–1157. <https://doi.org/10.2139/ssrn.2161115>
- Laws of Minnesota, Chapter 86 (2020).
- Laws of Minnesota 2023, § Chapter 61, Article 1, Sec. 61. Retrieved September 15, 2024, from <https://www.revisor.mn.gov/laws/2023/0/Session+Law/Chapter/61/>
- Martinis, J., Harris, J., Fox, D., & Blanck, P. (2023). State Guardianship Laws and Supported Decision-Making in the United States After *Ross and Ross v. Hatch*: Analysis and Implications for Research, Policy, Education, and Advocacy. *Journal of Disability Policy Studies*, 34(1), 8–16. <https://doi.org/10.1177/10442073211028586>
- Millar, D. S., & Renzaglia, A. (2002). Factors Affecting Guardianship Practices for Young Adults with Disabilities. *Exceptional Children*, 68(4), 465–484. <https://doi.org/10.1177/001440290206800404>
- Minn. Stat. 524.5-102 (2024). <https://www.revisor.mn.gov/statutes/cite/524.5-102>
- Minn. Stat. 524.5-310 (2024). <https://www.revisor.mn.gov/statutes/cite/524.5-310>
- Minn. Stat. 524.5-311. <https://www.revisor.mn.gov/statutes/cite/524.5-311>
- Minnesota Judicial Branch, State Administrator’s Office. (2024). *Guardianship and Conservatorship in Minnesota*.
- Minnesota State Demographic Center. (2022). *Population Data: Our Estimates*. <https://mn.gov/admin/demography/data-by-topic/population-data/our-estimates/>
- Minnesota Statutes 524.5-313. <https://www.revisor.mn.gov/statutes/cite/524.5-313>
- Nwakasi, C. C., & Roberts, A. R. (2022). Older Adults under Guardianship: Challenges and Recommendations for Improving Practice. *Journal of Aging & Social Policy*, 34(3), 401–417. <https://doi.org/10.1080/08959420.2021.1926198>

- Pell, E., & Mulkern, V. (2016). *Supported Decision Making Pilot: Pilot Program Evaluation Year 2 Report*. Human Services Research Institute. <https://www.hsri.org/publication/supported-decision-making-pilot-year-2>
- Peterson, A., Karlawish, J., & Largent, E. (2020). Supported Decision Making With People at the Margins of Autonomy. *The American Journal of Bioethics*, 21(11), 4–18. <https://doi.org/10.1080/15265161.2020.1863507>
- Public Law 116 - 131 - Supporting Older Americans Act of 2020.
- Purcal, C., Hill, T., Johnson, K., & Kayess, R. (2017). Evaluation of the Supported Decision Making Phase 2 (SDM2) project: Final report. In *SPRC Report 14/17* (No. SPRC Report 14/17). UNSW Sydney. <https://doi.org/10.4225/53/59C490B3E83A2>
- Raley, S. K., Shogren, K. A., Martinis, J., & Wehmeyer, M. L. (2023). Age of Majority and Alternatives to Guardianship: A Necessary Amendment to the Individuals with Disabilities Education Improvement Act of 2004. *Journal of Disability Policy Studies*, 34(1), 17–27. <https://doi.org/10.1177/1044207320932581>
- Ricotta, D. N., Parris, J. J., Parris, R. S., Sontag, D. N., Bioethics, M., & Mukamal, K. J. (2018). The Burden of Guardianship: A Matched Cohort Study. *Journal of Hospital Medicine*, 13(9), 595–601. <https://doi.org/10.12788/jhm.2946>
- Ruggles, S., Flood, S., Sobek, M., Backman, D., Chen, A., Cooper, G., Richards, S., Rodgers, R., & Shouweiler, M. (2024). *IPUMS USA* (Version 15.0) [Dataset]. <https://doi.org/10.18128/D010.V15.0>
- Schrade, B. (2011, September 29). Murky guardian system assailed as “prone to abuse.” *Star Tribune*. <https://www.startribune.com/murky-guardian-system-assailed-as-prone-to-abuse/130751018>
- Shogren, K. A., Wehmeyer, M. L., Martinis, J., & Blanck, P. (2018). Supported Decision-Making and Self-Determination Research. In *Supported Decision-Making: Theory, Research, and Practice to Enhance Self-Determination and Quality of Life* (1st ed.). Cambridge University Press. <https://doi.org/10.1017/9781108633314>
- State of Minnesota Office of the Legislative Auditor. (2024). *Guardianship of Adults: Project Description*.
- Teaster, P., Wood, E., Hurme, S., & Shealy, E. C. (2022). *Literature Review of Guardianship Abuse and Fraud* (No. 307521). <https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.ojp.gov/pdffiles1/nij/grants/307521.pdf&ved=2ahUKEwjP5Lb8-uaJAxVKvokEHWhSJFoQFnoECBsQAQ&usq=AOvVaw38T9VsUPPJyrW13DyjeNxG>
- The ARC of Northern Virginia. (2021, January 31). *Summary, Findings, and Recommendations of the Virginia Supported-Decision Making Pilot Project*. <https://thearcnova.org/wp-content/uploads/sites/6/2021/02/SDM-Pilot-Project-Final-Report-2.2.21.pdf>
- Then, S., Duffy, J., Bigby, C., Sinclair, C., Wiesel, I., Carney, T., & Douglas, J. (2024). Delivering decision making support to people with cognitive disability—What more has been learned from pilot programmes in

Australia and internationally from 2016 to 2021? *Australian Journal of Social Issues*, 59(2), 532–553.
<https://doi.org/10.1002/ajs4.295>

U.S. Census Bureau. (2021, November 21). *How Disability Data are Collected from The American Community Survey*. Census.Gov. <https://www.census.gov/topics/health/disability/guidance/data-collection-acs.html>

U.S. Government Accountability Office. (2010). *Guardianships: Cases of Financial Exploitation, Neglect, and Abuse of Seniors* (No. GAO-10-1046). U.S. Government Accountability Office.
<https://www.gao.gov/assets/gao-10-1046.pdf>

Wehmeyer, M., & Schwartz, M. (1997). Self-Determination and Positive Adult Outcomes: A Follow-up Study of Youth with Mental Retardation or Learning Disabilities. *Exceptional Children*, 63(2), 245–255.
<https://doi.org/10.1177/001440299706300207>