

WHITE EARTH BAND OF OJIBWE  
VULNERABLE ADULT AND ELDER PROTECTION CODE  
TITLE 24

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**CHAPTER ONE—GENERAL PROVISIONS**

**§ 1.01 Title**

This Code shall be titled “The Vulnerable Adult and Elder Protection Code.”

**§ 1.02 Findings**

1. The White Earth Tribal Council hereby finds and determines that it is in the best interests of the White Earth Nation to make laws which provide for the health and welfare of its members; and
2. The White Earth Tribal Council further finds and affirms that Elder and Vulnerable Adults are important and vital members of our community, respectful of their contributions as custodians for our traditions and customs as Anishanaabeg; and
3. The White Earth Tribal Council further finds and determines that it is the policy of this Nation to respect and protect our Elder or Vulnerable Adults as valued resources and as family members; and
4. The White Earth Tribal Council further finds and determines that some of our Elder or Vulnerable Adults are subject and vulnerable to abuse, neglect, and exploitation; and
5. The White Earth Tribal Council hereby enacts this White Earth Vulnerable Adult and Elder Protection Code with the purpose of providing services, protection, and affirming the dignity of our Elder and Vulnerable Adults.

### **§ 1.03 Purpose**

This Code shall be liberally construed and applied to carry out its purpose and intent, and the Code shall:

1. Protect, enhance and be an exercise of the inherent sovereignty of the White Earth Nation; and
2. Provide for identification of exploitation, abuse or neglect of Vulnerable Adults, Elders and other members of the White Earth Nation; and
3. Provide remedial measures and services for Vulnerable Adults, Elders and other members of the White Earth Nation; and
4. Preserve the peace, harmony and safety of the people of the White Earth Nation and those who enter or reside within the exterior boundaries of the White Earth Reservation.

### **§ 1.04 Definitions**

For purposes of this Code, the terms defined in this section have the meanings given them.

1. **Abandonment.** “Abandonment” means the desertion of an Elder or Vulnerable Adult by the Elder or Vulnerable Adult's family or caregiver(s), or an Elder or Vulnerable Adult’s family or caregiver(s) refusing or neglecting to provide for the Elder or Vulnerable Adult.
2. **Abuse.** “Abuse” means assault, battery, threatening conduct, coercion, unreasonable confinement, intimidation, cruelty, sexual abuse, emotional abuse, intimidation, exploitation, abandonment, exploitation, and financial exploitation. “Abuse” may include actions which are not accidents and are not therapeutic that cause physical pain or injury including hitting, kicking, slapping, pinching, biting, and aversive or deprivation procedures; restraints or seclusion not authorized under licensing statutes; and forcing an Elder or Vulnerable Adult to perform services or criminal activity for the benefit of another person.
3. **Adult Protection Team.** “Adult Protection Team” means a multidisciplinary team that collaborates for the purposes of providing case consultation, case management, and/or services to an Elder or Vulnerable Adult; and for the purposes of policy development and implementation, education, prevention, and data sharing. The Adult Protection Team members may include representatives from White Earth Human Services, White Earth Health, White Earth Tribal Mental Health, the DOVE Program, any healthcare provider, and any other professional and/or agency involved in the care and provision of services to Elders or Vulnerable Adults at risk of or subject to abuse, neglect, or exploitation.
4. **Assault.** “Assault” means attempt to cause bodily harm.

5. **Battery.** “Battery” means actions resulting in bodily harm or an offensive touching of another.
6. **Caregiver.** “Caregiver” means a person who either by contract, by agreement or voluntarily provides services or resources to an Elder or Vulnerable Adult or any person employed in an institution or agency licensed, or required to be licensed, by the Minnesota Department of Health, the Minnesota Department of Human Services, or the White Earth Band of Ojibwe which provides services or resources to an Elder or Vulnerable Adult, or any agency or institution licensed, or required to be licensed, by the Minnesota Department of Health, the Minnesota Department of Human Services, or the White Earth Band of Ojibwe which receives anything of value in return for providing services or resources to an Elder or Vulnerable Adult.
7. **Coercion.** “Coercion” means forcing someone to engage in or abstain from conduct which the person has a right to abstain from or engage in.
8. **Conservator(s).** “Conservator(s)” means for the purposes of this Code a person/persons appointed by the Tribal Court to manage the estate of an Elder or Vulnerable Adult.
9. **Conservatorship.** “Conservatorship” means for the purposes of this Code the appointment of a person/persons by the Tribal Court with the power and authority to manage the estate of an Elder or Vulnerable Adult.
10. **Cruelty.** “Cruelty” means acts which result in physical harm or pain or mental anguish.
11. **Department of Human Services.** “Department of Human Services” means for the purposes of this Code the White Earth Department of Human Services.
12. **Elder.** “Elder” means a person subject to the jurisdiction of the White Earth Nation who has attained the age of at least 55 years or older.
13. **Emotional Abuse.** “Emotional Abuse” is the infliction of threats, humiliation, or intimidation by a person on an Elder or Vulnerable Adult.
14. **Exploitation.** “Exploitation” means the use of funds, property or other resources of an Elder or Vulnerable Adult which results or is likely to result in detriment to the Elder or Vulnerable Adult; or the failure to use funds, property or other resources of any Elder or Vulnerable Adult for the Elder or Vulnerable Adult's benefit or according to the Elder or Vulnerable Adult's wish which results or is likely to result in detriment to the Elder or Vulnerable Adult.
15. **Financial Exploitation.** “Financial Exploitation” means taking money or something of value from an Elder or Vulnerable Adult and using it for someone beside the Elder or Vulnerable Adult's benefit which results or is likely to result in detriment to the Elder or Vulnerable Adult.

16. **Guardian(s).** “Guardian(s)” means for the purposes of this Code a person/persons appointed by the Tribal Court having the duty and authority to provide care and control of an Elder or Vulnerable Adult.
17. **Guardianship.** “Guardianship” means for the purposes of this Code the appointment of a person by the Tribal Court with the power and authority to make decisions regarding the care and control of an Elder or Vulnerable Adult.
18. **Indian.** “Indian” means any person who is a member or is eligible for membership in a federally recognized Indian Tribe, band or community, or Alaska Natives, or a person considered by the community to be Indian.
19. **Intimidation.** “Intimidation” means willfully placing an Elder or Vulnerable Adult in fear of harm by coercion, extortion, or duress.
20. **Kin.** “Kin” means a person with a significant relationship as defined by tribal custom to a person subject to this Code.
21. **Medical Professional.** "Medical Professional" includes doctors, nurse practitioners, registered nurses, social workers, psychiatrists or psychologists, and any medical provider who is licensed or has the ability to diagnosis or prescribes medication.
22. **Non-Indian.** “Non-Indian” means any person who is not an enrolled member or is not eligible to be enrolled as a member of a federally recognized Indian Tribe, band or community.
23. **Caregiver Neglect.** “Caregiver Neglect” means the denial of needed food, medicine or companionship by a caregiver or the leaving alone by a caregiver of an Elder or Vulnerable Adult.
24. **Self-Neglect.** “Self-Neglect” means an Elder or Vulnerable Adult who has the capacity to obtain food, medicine or medical treatment but chooses not to obtain these necessary services and/or items.
25. **Protected Person.** “Protected Person” for the purposes of this Code means an Elder or Vulnerable Adult for whom a guardian or conservator has been appointed or other protective order has been made.
26. **Reservation.** “Reservation” means the land reserved to the White Earth Band of Ojibwe as recognized under the 1867 Treaty of Washington between the Mississippi Band of Chippewa Indians and the United States, 16 Stat. 719. “Reservation” includes all lands which are now or in the future located within the exterior boundaries of the aforementioned treaty; any and all land held in trust for the Tribe by the United States; and all other land considered “Indian Country” as defined by 18 U.S.C. § 1151 that is associated with the Tribe.

27. **Reservation Tribal Council.** “Reservation Tribal Council” or “Tribal Council” means the governing body of the White Earth Band of Ojibwe.
28. **Threatening Conduct.** “Threatening conduct” means conduct that places another in fear of physical or other harm.
29. **Tribal Guardian/Tribal Conservator.** "Tribal Guardian/Tribal Conservator" means an individual employed by the White Earth Department of Human Services to serve as a guardian or conservator for the protected person. White Earth Department of Human Services would be the named guardian or conservator and the employee would carry out the duties of a guardian or conservator as part of their employment.
30. **Tribe.** “Tribe” or “Tribal” means, or refers to, the White Earth Band of Ojibwe.
31. **Tribal Court.** “Tribal Court” means the White Earth Band of Ojibwe Tribal Court as established under Title 1 of the White Earth Tribal Code.
32. **Verbal Abuse.** “Verbal Abuse” means insulting, frightening, humiliating, threatening and/or treating without respect an Elder or Vulnerable Adult.
33. **Vulnerable Adult.** “Vulnerable Adult” means an individual who is 18 years of age or older and subject to the jurisdiction of the White Earth Nation who is unable or incapable of making responsible decisions regarding their personal care or wellbeing and/or unable to provide for their own personal needs. This person is considered a functional Vulnerable Adult.
34. **Categorical Vulnerable Adult.** "Categorical Vulnerable Adult" means a person who is considered a Vulnerable Adult by their association with services or by placement in a treatment facility. Any person who is hospitalized, or who resides in a nursing home, group home or inpatient treatment facility is a Categorical Vulnerable Adult. Any person who receives home health care, PCA services or attends adult day care is a Categorical Vulnerable Adult. If a person ceases to need these services, he or she is no longer a Categorical Vulnerable Adult. Services include care facilities or services providers licensed, or required to be licensed, by the Minnesota Department of Health, Minnesota Department of Human Services, or the White Earth Nation; or providers under contract with the Minnesota Department of Health, Minnesota Department of Human Services, or the White Earth Nation; or any providers licensed, or required to be licensed, by any of the branches of the federal government that regulate facilities or health care services providers on the White Earth Reservation.
35. **Protected person.** “Protected person” means an enrolled member or other person under the jurisdiction of the White Earth Nation for whom a guardian or conservator has been appointed.
36. **Wii-doo-ka-waa.** “Wii-doo-ka-waa” is an Ojibwe word which means to help someone out or give someone some help. It is pronounced “*we do ka wah.*”

### **§ 1.05 Jurisdiction**

1. The White Earth Tribal Court shall have general jurisdiction over Elder or Vulnerable Adult protection matters as set forth under this Code.
2. Persons subject to the Vulnerable Adult and Elder Protection Code jurisdiction include:
  - a. Enrolled members of the White Earth Band of Ojibwe;
  - b. White Earth descendants who reside within the exterior boundaries of the White Earth Reservation;
  - c. Indian persons enrolled in any federally recognized tribe who reside within the exterior boundaries of the White Earth Reservation; and
  - d. All other persons residing within the exterior boundaries of the White Earth Reservation other than prohibited by federal or state law.
3. Territorial Jurisdiction. Except as provided in paragraph 2 above, the jurisdiction of the Tribal Court shall extend to:
  - a. All land within the exterior boundaries of the White Earth Reservation, including trust lands, fee patented land and rights-of-way running through the Reservation; and
  - b. All land outside the boundaries of the White Earth Reservation held in trust by the United States for the benefit of the Tribe and its members; and
  - c. All other land considered “Indian Country” as defined by 18 U.S.C. § 1151 that is associated with the Tribe.

### **§ 1.06 Treatment by Spiritual Means**

Nothing in this Code shall be construed to preclude treatment by spiritual means for any person who desires such treatment, or to deny the request of an Elder or Vulnerable Adult if they desire such treatment.

### **§ 1.07 Severability**

If any clause, sentence, paragraph, section or part of this Code shall, for any reason, be adjudicated by any court of competent jurisdiction to be invalid or unconstitutional, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which the judgment shall have been rendered.

## **§ 1.08 Sovereign Immunity**

1. No enforcement action taken pursuant to this Code, including the filing of an action by the White Earth Band of Ojibwe or any agency of the White Earth Band of Ojibwe in Tribal Court, shall constitute a waiver of the sovereign immunity of the White Earth Band of Ojibwe from suit, or any elected Reservation Tribal Council member or tribal official with respect to any action taken in an official capacity, or in the exercise of the official powers of any such office, either as to any counterclaim, regardless of whether the counterclaim arises out of the same transaction or occurrence, or in any other respect.
2. The sovereign immunity of the White Earth Band of Ojibwe and any elected Reservation Tribal Council member or tribal official with respect to any action taken in an official capacity, or in the exercise of the officials powers of any such office, in any action filed in the Tribal Court with respect thereto, may only be waived by a formal written resolution of the White Earth Tribal Council. All waivers shall be unequivocally expressed in such resolution. No waiver of the White Earth Band of Ojibwe's sovereign immunity from suit may be implied from any action or document. Waivers of sovereign immunity shall not be general but shall be specific and limited as to the jurisdiction or forum within which an action may be heard, the duration, action, and property or funds, if any, of the White Earth Band of Ojibwe or any agency, subdivision or governmental or commercial entity of the White Earth Band of Ojibwe subject thereto. No express waiver of sovereign immunity by written resolution of the Reservation Tribal Council shall be deemed a consent to the levy of any judgment, lien or attachment upon property of the White Earth Band of Ojibwe or any agency, subdivision or governmental or commercial entity of the White Earth Band of Ojibwe other than property specifically pledged or assigned therein.

## **CHAPTER TWO—RIGHTS OF ELDERS AND/OR VULNERABLE ADULTS**

### **§ 2.01 Scope**

This Code supplements and expands those protections afforded to all tribal members and other such persons under the jurisdiction of the Tribe as outlined in Chapter 1, § 1.05(2) of this Code as well as the White Earth Child and Family Protection Code, Title 6, Chapter 2. The provisions of this Code shall control in the event of conflicting or inconsistent law or policy.

### **§ 2.02 Declaration of Policy**

1. The dignity and self-reliance of the Tribe's Elder or Vulnerable Adults shall be acknowledged and respected by family members, the tribal community and employees of the Tribe. The rights of each Elder or Vulnerable Adult shall be recognized and protected.



2. The Tribe recognizes that Elder or Vulnerable Adult abuse, as a family problem, is not a private matter when the wellbeing and safety of an Elder or Vulnerable Adult of this Tribe is endangered.
3. In addition to the protections afforded herein, each Elder or Vulnerable Adult of the Tribe is encouraged to designate a trusted power of attorney and to have a Health Care Directive to provide for the Elder or Vulnerable Adult's wishes and protection in the event of incapacitation.

### **§ 2.03 Rights of Elders or Vulnerable Adults**

1. An Elder or Vulnerable Adult has the right to be treated with dignity and respect for the personal integrity of the individual. This means that the Elder or Vulnerable Adult:
  - a. has the right to make the individual's own choices regarding the individual's personal affairs, care, benefits, and services;
  - b. has the right to be free from abuse, neglect, and exploitation; and
  - c. if protective measures are required, has the right to designate a guardian or representative to ensure the right to quality stewardship of the individual's affairs.
2. The Elder or Vulnerable Adult shall receive notice and attend, either in person or by electronic means, any court hearings to which he or she is a party, and shall be advised of his or her right to appeal any determination made at Conservatorship or Guardianship proceedings before the Tribal Court.

## **CHAPTER THREE—ADULT PROTECTION TEAM**

### **§ 3.01 Establishment and Duties**

There is hereby established an Adult Protection Team for the White Earth Band of Ojibwe, as the Team is defined in Chapter 1, § 1.04(3) of this Code. The Adult Protection Team shall be responsible for the following:

1. Providing input and services as part of case consultation and/or case management for Elders and Vulnerable Adults in need of or subject to guardianship or conservatorship;
2. Developing and implementing policies for the protection of and provision of services to Elders and Vulnerable Adults; and
3. Providing education and prevention efforts for the purposes of protecting Elders and Vulnerable Adults.

### **§ 3.02 Data Sharing**

The Adult Protection Team may share information among the team members for the purposes of case consultation, case management, and the provision of services to an Elder or Vulnerable Adult subject to or in need of guardianship or conservatorship. For all other confidential information, the Adult Protection Team shall obtain releases of information from the Elder, Vulnerable Adult, and/or the guardian or conservator which identifies the information being requested for release and the purpose for the request.

## **CHAPTER FOUR—CONSERVATORS AND GUARDIANS**

### **§ 4.01 Petition**

1. Any tribal agency or representative, medical professional, social worker, or mental health worker; or any parent, spouse or relative of an Elder or Vulnerable Adult may file a petition alleging that the appointment of a tribal or private guardian and/or conservator is necessary. A petition by an individual other than a tribal agency or representative shall be considered the least restrictive appointment available, and shall be used where possible.
2. The petition shall set forth:
  - a. The name and address of the petitioner, and relationship of the petitioner to the proposed protected person;
  - b. Whether there is a nomination as to who should act as conservator or guardian, as well as the nominated party's relationship to the proposed protected person;
  - c. The name, address, and date of birth of the proposed protected person;
  - d. The names and addresses of the nearest relatives and spouse, if any, of the proposed protected person;
  - e. The probable value and general character of the proposed protected person's real and personal property and the probable amount of the proposed protected person's debts;
  - f. If guardianship is requested:
    - i. Facts showing that the proposed protected person is impaired to the extent of lacking sufficient understanding, capacity, or willingness to make or communicate responsible personal decisions, and who has demonstrated deficits in behavior which evidence an inability or

unwillingness to meet personal needs for medical care, nutrition, clothing, shelter, or safety; and/or

- ii. Evidence supporting guardianship may include the following: medical records, incident reports, and affidavits from family, friends, medical professionals, social workers, or mental health workers; and
- iii. The powers the petitioner believes are necessary to protect and supervise the proposed protected person; and
- iv. Facts showing that no less restrictive alternatives to guardianship are available including, but not limited to, care coordination, case management, family or caregiver education or support, powers of attorney, trusts, health care directives, a representative payee, development of community support, economic assistance benefits, waiver services, and community services.

g. If conservatorship is requested:

- i. Facts showing that the proposed protected person is impaired to the extent of lacking sufficient understanding or capacity to manage his/her financial affairs; and
- ii. The powers the petitioner believes are necessary to protect and supervise the proposed protected person.

- 3. The cost of filing shall be paid by the petitioner if the petitioner is not a tribal agency or representative. The petitioner may request to be reimbursed the cost of the filing fee from the protected person's estate upon appointment as guardian or conservator through proceedings in the Tribal Court. Determinations made pursuant to a request to proceed *in forma pauperis* shall be based on the protected person's income and estate.
- 4. A petition shall be filed by a tribal agency or representative only where no other individual or institution is available for appointment. The White Earth Human Services Department shall establish rules for petition and appointment as a conservator or guardian of an Elder or Vulnerable Adult, including the circumstances under which the Department and the Tribe are responsible for the costs associated with acting as a conservator or guardian.
- 5. In any action filed in Tribal Court under any provision of this Code, the White Earth Band of Chippewa Rules of Civil Procedure shall generally apply.

#### **§ 4.02 Due Process Requirements**

- 1. The respondent has the right to be represented by counsel, and if the respondent cannot afford an attorney, the Tribal Court shall appoint a qualified attorney. The

respondent may waive his or her right to counsel unless the respondent is incapable of attending court proceedings either in person or by electronic means; or if the Tribal Court determines that due to cognitive impairment the respondent is unable to make a knowing waiver of the right to be represented. The Tribal Court may rely on factors such as an examiner's statement in support of appointment or present impressions of the respondent during the initial proceedings in making its determination of whether the respondent is capable of making a knowing waiver.

2. The respondent and their counsel shall receive notice of all proceedings under this Code. The notice must include a statement that the respondent must attend, either in person or by electronic means, any court hearings to which they are a party. All notices shall be personally served within a reasonable time prior to the hearing.
3. If a guardian or conservator is appointed, the protected person retains all rights not restricted by the Tribal Court order, and these rights must be enforced by the Tribal Court. These rights include the right to:
  - a. Treatment with dignity and respect;
  - b. Due consideration of current and previously stated personal desires, medical treatment preferences, religious and spiritual beliefs, and other preferences and opinions in decisions made by the guardian or conservator;
  - c. Receive timely and appropriate healthcare and medical treatment that does not violate known conscientious, religious, spiritual, or moral beliefs of the ward or protected person;
  - d. Exercise control of all aspects of life not delegated specifically by Tribal Court order to the guardian or conservator;
  - e. Guardianship or conservatorship services individually suited to the protected person's conditions and needs;
  - f. Petition the Tribal Court to prevent or initiate a change in abode;
  - g. Care, comfort, social and recreational needs, training, education, habilitation, and rehabilitation care and services, within available resources;
  - h. Be consulted concerning, and to decide to the extent possible, the reasonable care and disposition of the protected person's clothing, furniture, vehicles, and other personal effects, to object to the disposition of personal property and effects, and to petition the Tribal Court for a review of the guardian's or conservator's proposed disposition;
  - i. Personal privacy;

- j. Communication and visitation with persons of the protected person's choice, provided that if the guardian has found that certain communication or visitation may result in harm to the protected person's health, safety, or wellbeing, that communication or visitation may be restricted but only to the extent necessary to prevent the harm;
- k. Petition the Tribal Court for termination or modification of the guardianship or conservatorship or for other appropriate relief; and
- l. Execute a health care directive, including both health care instructions and the appointment of a health care agent, if appropriate.

#### **§ 4.03 Emergency Appointment of Guardian**

1. If the Tribal Court finds that compliance with the procedures of this Code will likely result in substantial harm to the respondent's health, safety, or welfare, the Tribal Court may, on petition by a person interested in the respondent's welfare, appoint an emergency guardian whose authority will not exceed 30 days unless good cause is shown for a longer duration and who shall exercise only the powers specified by the Tribal Court in the order. The powers of the emergency guardian shall be as limited to those necessary to protect the respondent's safety, health, and welfare and to allow for a more permanent determination of the respondent's capacity. Reasonable notice of the time and place of a hearing on the petition must be given to the respondent and any other persons as the Tribal Court directs.
2. An emergency guardian may be appointed without notice to the respondent and the respondent's lawyer only if the court finds from affidavit or other sworn testimony that the respondent will be substantially harmed before a hearing on the appointment can be held. If the court appoints an Emergency Guardian without notice to the respondent, the respondent must be given notice of the appointment within 48 hours after the appointment. The court shall hold a hearing on the appropriateness of the appointment within five days after the appointment.

#### **§ 4.04 Short-term Appointment of a *Wii-doo-ka-waa***

1. A person or tribal agency interested in the welfare of the respondent may petition the Tribal Court for appointment of a *Wii-doo-ka-waa* (one who provides or offers help).
2. If the Tribal Court finds that compliance with the procedures of this Code will likely result in substantial harm to the respondent's health, safety, or welfare, and that no other person appears to have authority and willingness to act in the circumstances, the Tribal Court may appoint a *Wii-doo-ka-waa*. A *Wii-doo-ka-waa* may be the petitioner or other available person.

3. A *Wii-doo-ka-waa*'s authority may not exceed 30 days. Any powers of a court-appointed *Wii-doo-ka-waa* must be clearly specified by court order. The *Wii-doo-ka-waa* shall specifically request the powers he or she feels are necessary under the circumstances, with supporting evidence, and shall not be granted more powers than are necessary to protect the Elder or Vulnerable Adult for the duration of the appointment.
4. Upon receipt of the petition for a *Wii-doo-ka-waa*, the Tribal Court may appoint a lawyer to represent the respondent. Reasonable notice of the time and place of a hearing on the petition must be given to the respondent. Notice of the hearing, if the Tribal Court directs, will be given to any other interested persons.
5. A *Wii-doo-ka-waa* may be appointed without notice to the respondent and the respondent's lawyer only if the Tribal Court finds from affidavit or other sworn testimony that the respondent will be substantially harmed without appointment before a hearing on the appointment can be held. If the Tribal Court appoints a *Wii-doo-ka-waa* without notice to the respondent, the respondent must be given notice of the appointment as soon as possible. The Tribal Court shall hold a hearing on the appropriateness of the appointment as soon as possible after the appointment.
6. Appointment of a *Wii-doo-ka-waa* is not a determination of the respondent's incapacity.
7. The Tribal Court may remove a *Wii-doo-ka-waa* at any time. A *Wii-doo-ka-waa* shall make any report the Tribal Court requires.

#### **§ 4.05 Regular Appointment of Conservator or Guardian**

1. The Tribal Court Judge shall grant an order on the petition for appointment of conservator or guardian under this Code if the Tribal Court Judge finds that a conservator or guardian is required based on clear and convincing evidence.
2. The Tribal Court Judge will grant only those powers to the conservator or guardian deemed necessary to protect the proposed protected person's safety, health, and welfare.

#### **§ 4.06 Temporary Guardianship or Conservatorship**

1. Upon appointment of a guardian or conservator, the appointed guardian or conservator shall be considered temporary until they undergo a background check and drug testing.
2. All background checks and drug testing shall be completed within 30 days of temporary appointment.

3. The guardian or conservator shall bear the cost of the background checks and drug testing, and may request to be reimbursed the cost of the background checks and drug testing from the protected person's estate through proceedings in the Tribal Court.
4. The Tribal Court shall have access to all background checks and drug screens of proposed, temporary and permanent guardians and/or conservators.
5. The appointed guardian or conservator shall sign all releases necessary to provide these records to the Tribal Court.
6. If the background check reveals a conviction that would bar the temporary conservator or guardian from their appointed role, the Tribal Court shall schedule a hearing within seven (7) days to dismiss the temporary guardian or conservator and to subsequently appoint a new temporary guardian or conservator; and
7. If the drug test is positive for non-prescribed mood altering chemicals, the Tribal Court shall schedule a hearing within seven (7) days to dismiss the temporary guardian or conservator.

#### **§ 4.07 Individuals Eligible to Serve as Conservator or Guardian**

1. If guardian or conservator is appointed under Sections 4.04 or 4.05 of this Chapter, the Tribal Court Judge shall appoint a guardian or conservator who has an already existing relationship or connection to the proposed protected person if possible. The Tribal Court Judge shall appoint a guardian or conservator based on the best interests of the proposed protected person. The Tribal Court Judge may consider:
  - a. The spouse of the Respondent;
  - b. An adult child or grandchild of the Respondent;
  - c. A parent of the Respondent;
  - d. An adult with whom the Respondent has resided for more than six months before the filing of the petition;
  - e. An adult who is related to the Respondent by blood, adoption, or marriage;  
or
  - f. Any other adult or a professional conservator or guardian.
2. The Tribal Court Judge may decline to appoint a person having priority and appoint a person having a lower priority or no priority if that appointment is in the best interests of the proposed protected person. With respect to persons having equal priority, the Tribal Court may appoint based on the best interests of the proposed protected person.

3. The following individuals may not be appointed as a guardian or conservator:
  - a. Any person who has been convicted of any crime of sexual violence is barred from being appointed as a guardian or conservator;
  - b. Any person who has been convicted of a violent felony is barred from being appointed as a guardian or conservator;
  - c. Any person who has been convicted of arson is barred from being appointed as a guardian or conservator;
  - d. Any person against whom a substantiated finding of maltreatment of an Elder, Vulnerable Adult, or child has been made by the White Earth Nation, or by a county in the State of Minnesota, another tribal nation, or another state is barred from being appointed as a guardian or conservator; and
  - e. Any person who has been convicted or sentenced in the past five years (5) of any of the following crimes is barred from being appointed as a guardian or conservator:
    - i. Maltreatment or neglect;
    - ii. Assault;
    - iii. Any drug offense, misdemeanor or felony;
    - iv. Theft or robbery; or
    - v. Domestic violence.

4. Tribal Guardian/Tribal Conservator

- a. A Tribal Guardian or Tribal Conservator may be appointed as the guardian and/or conservator of a protected person who is found to be in need of a guardian or conservator if no other appropriate appointment is available; and only as a remedy for abuse, neglect or exploitation.
- b. A Tribal Guardian or Tribal Conservator may be appointed as the guardian or conservator of a protected person by discretion of the Tribal Court, by request of counsel, or by the protected person's family.



## **CHAPTER 5—POWERS AND DUTIES OF GUARDIANS AND CONSERVATORS**

### **§ 5.01 Powers of a Guardian**

A guardian shall be subject to the control and direction of a Tribal Court order at all times and in all things. The Tribal Court order may grant to a guardian only those powers necessary to provide for the demonstrated needs of the protected person. The duties and powers of a guardian and the limitations on a guardian include, but are not limited to:

1. The guardian shall have the power to have custody of the protected person and the power to establish a place of abode within or outside the White Earth Reservation;
2. The guardian shall have the power to give any necessary consent for necessary medical or other professional care, counsel, treatment, or service, except that no guardian may give consent for psychosurgery, electroshock, sterilization, or experimental treatment of any kind unless the procedure is granted by Tribal Court order;
3. The guardian shall not have the power to consent to any medical care for the protected person which violates the known conscientious, religious, or moral belief of the protected person; and
4. The guardian shall not have the power to revoke the health care directive of a protected person absent a Tribal Court order.

### **§ 5.02 Duties of a Guardian**

1. The guardian shall, on behalf of the protected person:
  - a. Have a fiduciary duty to manage the estate in the best interest of the protected person;
  - b. Have access to and ability to sign and authorize all financial and bank accounts, income streams and any other income source designed to benefit the protected person;
  - c. Ensure all housing, medical, grocery, pharmaceutical and other costs related to the cost of living are paid from the protected person's estate;
  - d. Provide for the protected person's care, comfort, and maintenance needs, including food, clothing, shelter, health care, transportation, social and recreational requirements, and, whenever appropriate, training, education, and habilitation or rehabilitation;

- e. Take reasonable care of the protected person's clothing, furniture, vehicles, and other personal effects, and, if other property requires protection, the power to seek appointment of a conservator of the estate;
  - f. Ensure the funds of any protected person be used solely for the support of the protected person; and
  - g. Any other reasonable duties in a manner according to the circumstances and station in life of such protected person.
2. The guardian has no duty to pay for these requirements out of personal funds. Whenever possible and appropriate, the guardian should meet these requirements through governmental benefits or services to which the protected person is entitled, rather than from the protected person's estate.
3. The guardian may, on behalf of the protected person:
  - a. Make gifts from the protected person's estate;
  - b. Convey, release, or disclaim contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety;
  - c. Create a revocable or irrevocable trust of property of the estate, whether or not the trust extends beyond the duration of the conservatorship, or to revoke or amend a trust revocable by the protected person;
  - d. Exercise the power to create, terminate, or alter the beneficial interests and beneficiaries of a payable on death (POD) account, a transfer on death (TOD) security registration or account, or joint tenancy interests with rights of survivorship;
  - e. Make, amend, or revoke the protected person's will. Any changes to the protected person's will must be done with good cause and have judicial approval; and
  - f. Apply on behalf of the protected person for any assistance, services, or benefits available to the protected person through any unit of government.

### **§ 5.03 Powers of a Conservator**

1. Where a protected person has inherited an undivided interest in real estate, the Tribal Court Judge, on a showing that it is for the best interest of the protected person, may authorize an exchange or sale of the protected person's interest or a purchase by the protected person of any interest other heirs may have in the real estate.

2. The conservator shall have the power to revoke, suspend, or terminate all or any part of a durable power of attorney of which the protected person is the principal with the same power the principal would have if the principal were not incapacitated. If a durable power of attorney is in effect, a decision of the conservator takes precedence over that of an attorney-in-fact.
3. If a protected person has made a financial transaction or gift or entered into a contract during the two-year period before establishment of the conservatorship, the conservator may petition the Tribal Court for review of the transaction, gift, or contract.
4. If the Tribal Court Judge finds that the protected person was incapacitated or subject to duress, coercion, or undue influence when the transaction, gift, or contract was made, the Tribal Court Judge may declare the transaction, gift, or contract void except as against a bona fide transferee for value, and order reimbursement or other appropriate relief.
5. If a conservator is appointed on the petition, and if the conservatorship order removes or restricts the right of the protected person to transfer property or to contract, then all contracts except for necessities, and all transfers of personal property, tangible or intangible, including, but not limited to, cash or securities transfers at banks, brokerage houses, or other financial institutions, or transfers of cash or securities made by the protected person after the filing and before the termination of the conservatorship shall be voidable.

#### **§ 5.04 Duties of a Conservator**

1. The conservator shall, on behalf of the protected person:
  - a. Have a fiduciary duty to manage the estate in the best interest of the protected person;
  - b. Have access to and ability to sign and authorize all financial and bank accounts, income streams and any other income source designed to benefit the protected person; and
  - c. Ensure all housing, medical, grocery, pharmaceutical and other costs related to the cost of living are paid from the protected person's estate.
2. The conservator has no duty to pay for these requirements out of personal funds. Whenever possible and appropriate, the conservator should meet these requirements through governmental benefits or services to which the protected person is entitled, rather than from the protected person's estate.
3. The conservator may, on behalf of the protected person:

- b. Make gifts from the protected person's estate;
- c. Convey, release, or disclaim contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entireties;
- d. Create a revocable or irrevocable trust of property of the estate, whether or not the trust extends beyond the duration of the conservatorship, or to revoke or amend a trust revocable by the protected person;
- e. Exercise the power to create, terminate, or alter the beneficial interests and beneficiaries of a payable on death (POD) account, a transfer on death (TOD) security registration or account, or joint tenancy interests with rights of survivorship;
- f. Make, amend, or revoke the protected person's will; and
- g. Apply on behalf of the protected person for any assistance, services, or benefits available to the protected person through any unit of government.

## **CHAPTER SIX—JUDICIAL REVIEW AND PROCEDURES**

### **§ 6.01 Initial Review Hearing**

1. Three months after a temporary guardian or conservator is appointed, the Tribal Court shall schedule a review hearing;
2. Two weeks prior to the hearing, the temporary guardian or conservator shall provide to the Tribal Court a detailed financial record of any and all transactions that have occurred on behalf of the protected person;
3. At the initial review hearing, the Tribal Court shall review the temporary guardian or conservator's background check and drug test as well as the detailed financial records.
4. The temporary guardian or conservator may be made permanent by Tribal Court order after the initial review hearing.

### **§ 6.02 Reporting Duties of the Guardian or Conservator**

1. Within sixty (60) days following appointment, and at such other times as the Tribal Court directs, a guardian and/or conservator shall file an inventory of the real and personal property of the protected person with the Tribal Court.

2. The guardian shall file an annual accounting listing the estate, including any money acquired or expended on behalf of the protected person's estate.
3. Any gifts, transactions or purchases over the amount of \$1,000.00 on behalf of the protected person must first be approved by the Tribal Court except for medical related expenses.
4. Failure to satisfy the needs and requirements of this clause shall be grounds for removal of a private guardian and/or criminal prosecution.

### **§ 6.03 Review of Guardian or Conservator's Actions and Decisions**

1. Additional review hearings may occur at the discretion of the Tribal Court Judge but shall occur, at a minimum, on an annual basis.
2. The Tribal Court Judge, in exercising or in approving a guardian or conservator's exercise of the powers listed above, may consider:
  - a. The financial needs of the protected person and the needs of individuals who are dependent on the protected person for support and the interests of creditors;
  - b. Possible effect on income, estate, gift, or inheritance;
  - c. The protected person's previous pattern of giving or level of support;
  - d. Whether the protected person's needs can be met from the person's remaining assets after any transfer is made, taking into account the effect of any transfer on eligibility for medical assistance long-term care services;
  - e. Any breach of fiduciary duties by the guardian or conservator;
  - f. Lack of necessary reporting and/or financial accountability by the guardian or conservator;
  - g. Any fraud or evidence of mismanagement of the protected person's financial resources, estate or personal property; and
  - h. Any other factors the Tribal Court considers relevant.

### **§ 6.04 Reimbursement for a Guardian or Conservator**

1. A guardian or conservator is entitled to reasonable compensation for services and to reimbursement for expenditures made on behalf of the protected person, in an amount to be disclosed to the Tribal Court and not to exceed \$50 per month.

Compensation and reimbursement shall be paid to the guardian or conservator from the protected person's estate.

2. A guardian or conservator is entitled to reimbursement for mileage expenses at the current federal rate for travel only to and from medical appointments for the protected person, and court hearings held on the matter of the guardianship and/or conservatorship.
3. A guardian or conservator may request that the Tribal Court consider other expenses incurred in the scope of guardianship or conservatorship for reimbursement.

### **§ 6.05 Termination of Guardianship or Conservatorship**

This section shall apply to the termination of guardianship or conservatorship proceedings before the Tribal Court.

1. When a protected person is restored to capacity, the protected person may petition for dismissal of the conservatorship or guardianship.
2. When a protected person dies, the personal representative of the estate is the only interested person.

### **§ 6.06 Termination of a Guardian or Conservator**

This section shall apply to the termination of appointment of a person/persons as guardian or conservator where guardianship or conservatorship proceedings are ongoing.

1. The court may terminate a guardian or conservator for good cause on a motion by the protected person or other interested person, if, by a preponderance of the evidence, the court finds that the guardian or conservator have failed in their fiduciary care or duties.
2. A guardian or conservator may, at any time, petition the Tribal Court for termination of their appointed role.
3. A hearing shall be held to determine if a dismissal of the guardian or conservator is appropriate.
4. No guardian or conservator shall be dismissed until a new temporary guardian or conservator is appointed.
5. A dismissed guardian or conservator may be considered at a later date for a subsequent appointment unless the dismissal was for good cause.

### **§ 6.07 Denial and Appeals Process**

1. Any person denied appointment of guardianship or conservatorship or any person dismissed as guardian or conservator may petition the Tribal Court for review of the decision.
2. All petitions shall be reviewed by the Tribal Court Judge under a best interest of the protected person standard and in consideration of the totality of the circumstances.
3. The Tribal Court Judge may issue a decision on the appeal of a petition with or without a hearing.

### **§ 6.08 Appearance on Petition for Adjudication of Accounts**

If the protected person, conservatee or any interested person shall object to the account, or demand the appearance of the guardian or conservator for hearing on the account, at any time up to and including the date set for the hearing, the Tribal Court Judge will continue the hearing, if necessary, to a later date and require the appearance of the guardian/conservator for examination. Notice of hearing may be waived with the consent of all interested.