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3 **WAGANAKISING ODAWAK STATUTE 2022-___**
4 **VULNERABLE ELDER AND ADULT, OR INCAPACITATED ADULT PROTECTION,**
5 **GUARDIANSHIP AND CONSERVATORSHIP STATUTE**
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8 **SECTION I. PURPOSE**
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10 The purpose of this Statute is to protect Vulnerable Elders and Adults, or Incapacitated Adults
11 from abuse, neglect, or exploitation as defined by this Statute; and provide for services and court
12 action for Vulnerable Elders and Adults, or Incapacitated Adults; and appoint guardianship
13 and/or conservatorship for Incapacitated Adults, if necessary. This Statute repeals and replaces
14 any previous Adult Welfare Code, including WOS 2015-012, WOS 2005-07, repeals and
15 replaces WOS 2015-017 Elder and Adult Conservatorship and Guardian Statute, and repeals and
16 replaces WOS 2022- XXX Vulnerable Elder and Adult, or Incapacitated Adult, Protection
17 Statute.
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20 **SECTION II. DEFINITIONS**
21

22 **A.** "Accounting" means a detailed written summary of all financial actions done by the
23 guardian and/or conservator on behalf of the Incapacitated Adult.
24

25 **B.** "Abuse" means
26

27 **1.** An intentional or negligent infliction of bodily injury, unreasonable confinement,
28 intimidation, emotional abuse or cruel punishment of a Vulnerable Elder and Adult, or
29 Incapacitated Adult which result in physical pain or mental anguish; or
30

31 **2.** Sexual abuse is physical contact without consent of a Vulnerable Elder and Adult,
32 or Incapacitated Adult with the intent to derive sexual gratification by the person making
33 contact. Consent may not be obtained by threat, coercion, intimidation or fraud.
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1 **C.** “Bond” means an insurance policy or similar instrument that is intended to protect the
2 Incapacitated Adult’s property should the conservator mismanage the person’s estate.

3
4 **D.** "Caretaker" means a person who is required by court of competent jurisdiction to provide
5 services or resources to a Vulnerable Elder and Adult, or Incapacitated Adult.

6
7 **E.** “Conservator” means a person appointed by a court of competent jurisdiction who is
8 responsible for the collection, management, preservation, and investment of an Incapacitated
9 Adult's property.

10
11 **F.** “Department” means the Little Traverse Bay Bands of Odawa Indians Department of
12 Human Services.

13
14 **G.** “Emergency” means a situation in which a Vulnerable Elder and Adult, or Incapacitated
15 Adult is immediately at risk of death or injury and is unable to consent to services to remove the
16 risk.

17
18 **H.** “Exploitation” means the improper or unauthorized use of a Vulnerable Elder and Adult,
19 or Incapacitated Adult’s funds, property or other resources or failure to use a Vulnerable Elder and
20 Adult, or Incapacitated Adult’s funds, property or resources as a Vulnerable Elder and Adult, or
21 Incapacitated Adult’s desire or for their benefit.

22
23 **I.** “Family” means any spouse, parent, child, stepparent, stepchild, grandparent,
24 grandchild, or significant other person or relative with whom a Vulnerable Elder and Adult, or
25 Incapacitated Adult which has a familial relationship, or who resides with a Vulnerable Elder and
26 Adult, or Incapacitated Adult.

27
28 **J.** “Guardian” means a person appointed by a court of competent jurisdiction to exercise the
29 duty and authority to provide care and control of an Incapacitated Adult’s personal health, safety,
30 and welfare, under the Tribal Court’s jurisdiction.

31
32 **K.** "Good Faith" means an honest and reasonable belief or purpose, and the lack of intent to
33 defraud.

1 **L.** "Incapacitated Adult" means a Vulnerable Elder or Adult, because of physical or
2 psychological infirmities, lacks the understanding or capacity to make or communicate informed
3 decisions or is unable to manage property and business affairs effectively and needs a guardianship
4 and/or conservatorship.

5
6 **M.** "Least restrictive alternative" means whenever it is necessary to protect a Vulnerable Elder
7 and Adult, or Incapacitated Adult, the least restrictive method of intervention shall be used to
8 protect the freedom and independence of a Vulnerable Elder and Adult, or Incapacitated Adult;
9 the least restrictive alternative is that environment which is the most like a Vulnerable Elder and
10 Adult, or Incapacitated Adult's home setting and which is most capable of supporting the protected
11 person's physical and mental health; and emotional well-being.

12
13 **N.** "LTBB" or "Tribe" or "Tribal" means the Little Traverse Bay Bands of Odawa Indians.

14
15 **O.** "Neglect" means the failure of someone with fiduciary or legal responsibility to provide
16 necessary services or resources to maintain the health or safety of a Vulnerable Elder and Adult,
17 on Incapacitated Adult, or self-neglect caused by the inability of the adult to provide themselves
18 with basic food, clothing, shelter and medical care due to mental incompetency or physical
19 disability.

20
21 **P.** "Party" or "interested party" means the family, caretaker, and any other person that has an
22 interest in the welfare of a Vulnerable Elder or Adult, or Incapacitated Adult. The Court shall have
23 the power to determine who is or is not a party or interested party in any court proceeding.

24
25 **Q.** "Prosecutor" means the Little Traverse Bay Bands of Odawa Indians Prosecutor.

26
27 **R.** "Protective placement" means the placement of a Vulnerable Elder and Adult, or
28 Incapacitated Adult, in a hospital, nursing home, residential care facility, other suitable placement,
29 or transfer from one facility to another with consent of that person or with appropriate legal
30 authority.

31
32 **S.** "Protective services" means services provided to a Vulnerable Elder and Adult, or
33 Incapacitated Adult, with consent or by order of appropriate legal authority which includes but is
34 not limited to: social services, mental and physical health examinations, home and day care, legal
35 assistance, guardianship, case management and any other services consistent with this Statute.

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2 **T.** "Substantiated Report" means when there is probable cause of abuse after an investigation
3 conducted by the Department. The report is sent to the Tribal Prosecutor for further steps to be
4 taken.

5
6 **U.** "Tribe" or "Tribal" means the Little Traverse Bay Bands of Odawa Indians.

7
8 **V.** "Tribal Court" means the Little Traverse Bay Bands of Odawa Indians Tribal Court.

9
10 **W.** "Vulnerable Elder and Adult" means an Elder who is fifty-five (55) years old or older or
11 an Adult who is eighteen (18) years old or older and is unable to protect themselves from abuse,
12 neglect or exploitation due to mental incompetency or physical disability.

13
14 **X.** "Unsubstantiated Report" means when no probable cause exists after an investigation.
15 These reports are filed within the Department for reference as needed.

16
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18 **SECTION III. AUTHORITY**

19
20 **A.** Pursuant to provisions of the Tribal Constitution, including Article I, B, 2. "*Promote with*
21 *special care the health, educational and economic interests of all the people, especially our*
22 *children and Elders, and shall protect them from social injustice and all forms of exploitation; and*
23 4. "*Establish and maintain within the limits of their economic capacity and development, effect*
24 *provision for securing the right to work, to education and assistance, in cases of unemployment,*
25 *old age, sickness and disablement, and in other cases of need*".

26
27 **B.** Pursuant to provisions of the Tribal Constitution, including Article VI., C. "... the
28 Executive Branch to administer such funds, enforce this Constitution and laws passed thereunder,
29 and implement policies and procedures enacted by the Tribal Council in accordance with Article
30 VIII", Article VII of the Tribal Constitution allows the Legislative Branch to *approve the creation*
31 *or dissolution of Executive divisions or departments to promote and protect the peace, health,*
32 *safety, education and general welfare of Little Traverse Bay Bands of Odawa Indians and its*
33 *members.*

1 **SECTION IV. JURISDICTION**

2
3 **A.** The Little Traverse Bay Bands of Odawa Indians shall have jurisdiction over the
4 following:

5
6 **1.** A Vulnerable Elder and Adult, or Incapacitated Adult who is unable to protect
7 themselves from suspected abuse, neglect or exploitation due to mental incapacity or
8 physical disability and resides within Tribal Trust Lands;

9
10 **2.** An Incapacitated Adult, because of physical or psychological infirmities, lacks the
11 understanding or capacity to make or communicate informed decisions or is unable to
12 manage property and business affairs effectively and needs a guardianship and/or
13 conservatorship and resides within Tribal Trust Lands;

14
15 **3.** A person who is required by a court of competent jurisdiction to or has a
16 guardianship, conservatorship, fiduciary or legal responsibility to provide services or
17 resources and is suspected of abuse, neglect or exploitation under this Statute to a Tribal
18 Vulnerable Elder and Adult, or Incapacitated Adult who resides within Tribal Trust
19 Lands.

20
21 **4.** A person appointed by Tribal Court as a Conservator and/or Guardian.
22
23

24 **SECTION V. DUTY TO REPORT**

25
26 **A.** Every person has the duty to report to the Department if they suspect that a Vulnerable
27 Elder and Adult, or Incapacitated Adult is abused or neglected.
28

29 **B.** It is mandated by this Statute for the following to report to the Department any suspected
30 abuse, neglect or exploitation of a Vulnerable Elder and Adult, or Incapacitated Adult immediately
31 or no later than twenty-four (24) hours of obtaining the information:
32

33 **1.** Persons who either have been court appointed or have a legal responsibility to a
34 Vulnerable Elder and Adult, or Incapacitated Adult;
35

1 2. Law Enforcement;

2
3 3. Tribal employee(s) who provide services to Vulnerable Elder and Adult, or
4 Incapacitated Adult, of the following departments:

- 5
- 6 a. Education
- 7 b. Elders
- 8 c. Health
- 9 d. Housing
- 10 e. Human Services
- 11 f. Language

12
13 4. Elected or appointed official of the Tribe;

14
15 C. Reports should include a detailed summary of the actions, inactions and/or allegations of
16 the suspected abuse or neglect.

17
18 D. Reports of suspected Vulnerable Elder and Adult, or Incapacitated Adult’s abuse are
19 presumed to be made in good faith.

20
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22 **SECTION VI. IMMUNITY FOR REPORTING**

23
24 A person who in good faith reports suspected abuse, neglect or exploitation as defined in this
25 Statute is immune from any civil or criminal statute, even if the report is unsubstantiated.

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28 **SECTION VII. CONFIDENTIALITY OF REPORTER and RECORDS**

29
30 A. The identity of the reporter of suspected Vulnerable Elder and Adult, or Incapacitated
31 Adult’s abuse, neglect or exploitation, under this Statute, is confidential.

32
33 B. Records of investigations concerning suspected Vulnerable Elder and Adult, or
34 Incapacitated Adult’s abuse, neglect or exploitation shall be confidential.

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SECTION VIII. FAILURE TO REPORT; CIVIL PENALTY

If found responsible, after a fair hearing of the Court, that a person mandated by this Statute to report, and that person fails to report suspected Vulnerable Elder and Adult, or Incapacitated Adult's abuse, neglect, or exploitation, may be subject to a civil fine not to exceed five-thousand (\$5,000.00) dollars.

SECTION IX. RETALIATION; CIVIL PENALTY

If a person is found to have retaliated against a reporter, they may be subject to a civil fine not to exceed five-thousand (\$5,000.00) dollars. For the purposes of this Statute, "Retaliation" shall include the following: intimidating or threatening to cause bodily harm, or causing bodily harm, or causing bodily harm to a reporter or family of a person reporting abuse; causing the reporter or reporter's family to be terminated, suspended or reprimanded by an employer; causing property damage to real or personal property belonging to a reporter's family.

SECTION X. FALSE REPORT

If found responsible, after a fair hearing of the Court, any person who makes a report of suspected Vulnerable Elder and Adult, or Incapacitated Adult's abuse, neglect or exploitation as defined by this Statute knowing it to be false may be subject to a civil fine not to exceed five-thousand (\$5,000.00) dollars.

SECTION XI. HUMAN SERVICES DEPARTMENT DUTIES, RESPONSIBILITIES and AUTHORITY

- A.** The Department shall be responsible to initiate an investigation, upon receiving a report of:
1. a Vulnerable Elder and Adult's abuse, or Incapacitated Adult neglect or exploitation, or
 2. an Incapacitated Adult in need of a Guardian and/or Conservator.

- 1
- 2 **B.** The Department shall investigate all reports.
- 3
- 4 **C. Abuse, Neglect or Exploitation.** The Department shall initiate an investigate upon receipt
5 of the report of abuse, neglect or exploitation within twenty-four (24) hours, meet face to face with
6 the alleged victim within seventy-two (72) hours and complete the investigation with a written
7 report within thirty (30) consecutive days based upon:
- 8
- 9 **1.** Personal interviews with the alleged abused, neglected or exploited Vulnerable
10 Elder and Adult, or Incapacitated Adult, the immediate family and caretaker, suspected
11 abuser, employees of agencies (if involved), and any other person who may have pertinent
12 information;
- 13
- 14 **2.** Medical records and other evidence of abuse;
- 15
- 16 **3.** Assessments of a Vulnerable Elder and Adult, or Incapacitated Adult’s living
17 conditions;
- 18
- 19 **4.** Any other observations, assessments or documents that may aid in completing an
20 accurate report.
- 21
- 22 **D.** Based on the investigation, if the Department believes that there is evidence of Vulnerable
23 Elder and Adult, or Incapacitated Adult’s abuse, neglect or exploitation, the Department will
24 submit the report to the Prosecutor.
- 25
- 26 **E.** Based on the investigation, if the Department believes that there an Incapacitated Adult in
27 need of a Guardian and/or Conservator, the Department may request the Prosecutor file a petition
28 with Tribal Court.
- 29
- 30 **F.** The Department shall have the authority to obtain from all Tribal Governmental
31 Departments, Agencies and Programs information and assistance with the Department’s
32 investigations of suspected Vulnerable Elder and Adult, or Incapacitated Adult, abuse, neglect or
33 exploitation; or Incapacitated Adult in need of a Guardian and/or Conservator. This shall include
34 information **sharing without the need of signed releases,** if it is part of an ongoing investigation for
35 alleged abuse or neglect.

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3 **SECTION XII. LAW ENFORCEMENT DUTIES AND RESPONSIBILITIES**
4

5 **A.** Upon the request of the Department, Law Enforcement shall assist the Department in
6 conduct of an investigation within twenty-four (24) hours, if one or more of the following
7 conditions exist:
8

9 **1.** Abuse or neglect is the suspected cause of death of a Vulnerable Elder and Adult,
10 or Incapacitated Adult;
11

12 **2.** A Vulnerable Elder and Adult, or Incapacitated Adult, is the victim of suspected
13 sexual abuse or sexual exploitation;
14

15 **3.** Abuse or neglect resulting in severe physical injury to a Vulnerable Elder and
16 Adult, or Incapacitated Adult, that requires medical treatment or hospitalization. For the
17 purpose of this subsection, “severe physical injury” means brain damage, skull or bone
18 fracture, subdural hematoma, dislocation, sprain, internal injuries, poisoning, burns, scalds,
19 severe cuts, or any other physical injury that seriously impairs the health or physical well-
20 being of a vulnerable Tribal Elder or Vulnerable Tribal Adult, or Incapacitated Adult.
21

22 **4.** Law Enforcement intervention is necessary for the protection of a Vulnerable Elder
23 and Adult, or Incapacitated Adult, Department staff, or another person involved in the
24 investigation; or
25

26 **5.** The alleged perpetrator of abuse, neglect or exploitation of a Vulnerable Elder and
27 Adult, or Incapacitated Adult, is not a person responsible for the health or welfare of the
28 Vulnerable Elder and Adult, or Incapacitated Adult.
29

30 **B.** Law Enforcement shall be responsible to determine and investigate if any other criminal
31 acts are alleged and shall forward this information to the Prosecutor.
32
33

34 **SECTION XIII. PROSECUTOR’S DUTIES AND RESPONSIBILITIES**
35

1 The Prosecutor is authorized by this Statute to petition the Court for Emergency Protection Orders
 2 and Non-Emergency Protection Orders for the protection of Vulnerable Elders and Adults, or
 3 Incapacitated Adult from abuse, neglect or exploitation, upon receipt of a substantiated report of
 4 investigation from the Department.

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 6
 7 **SECTION XIV. PETITIONS AND EMERGENCY ORDERS**
 8

9 **A.** The Department or any concerned or interested party may file a Petition for an Emergency
 10 Protection Order (EPO) directly with the Court of suspected Vulnerable Elder and Adult, or
 11 Incapacitated Adult's abuse, neglect or exploitation.

12
 13 **B.** Upon filing of a Petition, the Court may issue an EPO authorizing emergency services or
 14 protective placement either ex parte or after a hearing, if there is a showing, upon clear and
 15 convincing evidence that:

16
 17 1. A person is a Vulnerable Elder and Adult, or Incapacitated Adult; and

18
 19 2. The Vulnerable Elder and Adult, or Incapacitated Adult, is at risk of immediate
 20 abuse, neglect or exploitation.

21
 22 **C.** The EPO, using the least restrictive alternative, may include:

23
 24 1. Specific emergency services to be provided to remediate the emergency;

25
 26 2. Protective placement only if the evidence indicates that it is absolutely necessary;

27
 28 3. Designation of a person or agency required to implement the order; and

29
 30 4. A warrant for forcible entry by Tribal Law Enforcement, if requested and
 31 documented attempts to gain voluntary access have failed.

32
 33 **D.** EPO's shall not exceed a maximum of seventy-two (72) hours excluding weekends and
 34 holidays, and may only be renewed for an additional seventy-two (72) hours, if there is evidence
 35 of continuing emergency.

1
2 **E.** The Court shall hold a hearing upon the filing of a Petition for an EPO or if an EPO was
3 issued ex parte, within seventy-two (72) hours. At the hearing, if the Vulnerable Elder or Adult,
4 or Incapacitated Adult, is not represented, a Guardian ad Litem shall be appointed at this time, if
5 it has not already been done so at the time of the filing of the Petition for an EPO.

6
7 **F.** All parties, including attorneys, are permitted to attend the hearing for an EPO. The hearing
8 may be done ex parte if the need arises. The sufficiency of the petition will be determined on a
9 totality of circumstances and goes into effect upon the immediate granting of the order by the
10 Court.

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13 **SECTION XV. EMERGENCY PLACEMENT**

14
15 **A.** If there is good cause to believe that an emergency exists and a Vulnerable Elder and Adult,
16 or Incapacitated Adult is at risk of immediate or irreparable harm upon personal observation or by
17 the Department's investigation, the Department or Tribal Law Enforcement shall immediately take
18 steps to protect the Vulnerable Elder and Adult, or Incapacitated Adult, including emergency
19 services or protective placement. A Court Order must be obtained within twenty-four (24) hours
20 to continue the authorization of emergency services or protective placement.

21
22 **B.** Anyone who acts, based on reasonably good faith, pursuant to this section shall be immune
23 from civil and criminal suit if the suspected abuse or neglect results in an unsubstantiated report.

24
25
26 **SECTION XVI. PETITIONS AND NON-EMERGENCY PROTECTION ORDER**

27
28 **A.** The Department or any concerned or interested party may file a Petition for a Non-
29 Emergency Protection Order (NEPO) directly with the Court of suspected Vulnerable Elder and
30 Adult, or Incapacitated Adult's abuse, neglect or exploitation.

31
32 **B.** Upon the filing of a Non-Emergency Protection Order (NEPO) petition, the Court may
33 issue an NEPO, after a hearing that shall be held within fourteen (14) consecutive days if there is
34 a showing, upon clear and convincing evidence

1 **1.** A person is a Vulnerable Elder and Adult, or Incapacitated Adult; and

2
3 **2.** The Vulnerable Elder and Adult, or Incapacitated Adult, is at risk of abuse, neglect
4 or exploitation.

5
6 **C.** All parties are entitled to Notice and an opportunity to be heard on the record. All
7 proceedings shall be open to the public, unless the Court, on its own motion or by motion of a
8 party, determines that by the nature of the proceedings, the proceedings are to be closed.

9
10 **D.** Judgments. The Court shall make a written determination or decision within forty-eight
11 (48) hours of a hearing and use the least restrictive alternative, which may include the following:

12
13 **1.** Appointing Guardian ad Litem for the Vulnerable Elder and Adult, or Incapacitated
14 Adult to enter other orders for the protection of the Vulnerable Elder and Adult, or
15 Incapacitated Adults.

16
17 **2.** Order the Department to prepare petitions for Guardianship and/or Conservatorship
18 if the Vulnerable Elder or Adult is believed to be an Incapacitated Adult; or order the
19 Department file a request for a termination of the current Guardian and/or Conservator for
20 an Incapacitated Adult, and prepare petitions for a new appointment;

21
22 **3.** Removal from the place where the abuse or neglect occur(ed) including the
23 Vulnerable Elder and Adult, or Incapacitated Adult's home;

24
25 **4.** Remove the abuser from the residence to prohibit further abusive acts;

26
27 **5.** Requiring any party having a fiduciary duty to the Vulnerable Elder and Adult, or
28 Incapacitated Adult, to account for the Vulnerable Elder and Adult, or Incapacitated
29 Adult's funds and/or property.

30
31 **E.** Protective orders authority shall not exceed 180 days; Guardianship and/or conservatorship
32 may be temporary or permanent.

1 **SECTION XVII. PETITION FOR FINDING OF VULNERABILITY ELDER OR**
2 **ADULT as INCAPACITATED and APPOINTMENT OF GUARDIAN OR**
3 **CONSERVATOR**
4

5 **A.** The Department via the Prosecutor, or any concerned or interested party may file a petition
6 for Finding of a Vulnerable Elder or Adult as an Incapacitated Adult and request an Order for
7 Appointment of Guardian or an Order for Appointment of a Conservator, or both.
8

9 **B.** The Petition will include, but not limited to, the name, age, date of birth, gender and address
10 of the alleged Incapacitated Adult, reasons why the need exists, petitioner's relationship with the
11 alleged Incapacitated Adult, names and addresses of immediate family of the alleged Incapacitated
12 Adult, the extent of the alleged Incapacitated Adult's estate, and the names and addresses of those
13 who can provide testimony that the person needs a guardian or conservator.
14

15 **C.** The petitioner or Court will mail copies of the petition and notice of the hearing to all
16 interested persons who include the following people:
17

18 1. The alleged Incapacitated Adult's spouse;
19

20 2. If known, a person named as the alleged Incapacitated Adult's agent in a Durable
21 Power of Attorney or Patient Advocate Designation, or other medical or legal
22 representatives;
23

24 3. The alleged Incapacitated Adult's children (or, if the Incapacitated Adult has no
25 children, the Incapacitated Adult's parents); and
26

27 4. If there is one, the alleged Incapacitated Adult's Guardian or Conservator appointed
28 by a Court in another jurisdiction.
29

30 **D.** The Court shall appoint Guardian ad Litem to represent the alleged Incapacitated Adult,
31 unless the alleged Incapacitated Adult has his or her own attorney. The alleged Incapacitated Adult
32 and these interested persons are entitled to object to the appointment of a Guardian or Conservator.
33

34 **E.** The Court may issue an Order for Appointment of Guardian or Appointment of a
35 Conservator, or both, after a hearing which shall be held, and there is a showing, upon clear and

1 convincing evidence based a detailed description of the alleged Incapacitated Adult's physical or
2 psychological infirmities by a physician or mental health professional and an explanation of how
3 and to what extent each infirmity interferes with the alleged Incapacitated Adult's ability make
4 decisions, on the following:

5
6 **1.** The person lacks the understanding or capacity to make or communicate informed
7 decisions, and the appointment of a guardian is necessary to provide for the Incapacitated
8 Adult's continuing care and supervision;

9
10 **2.** The person is an adult who is unable to manage property and business affairs
11 effectively for reasons such as mental illness, mental deficiency, physical illness or
12 disability, chronic use of drugs, chronic intoxication, confinement, or disappearance, and
13 the person has property that will be wasted or dissipated unless the Appointment of a
14 Conservator is provided, or money is needed for the Incapacitated Adult's support, care,
15 and welfare or for those entitled to the Incapacitated Adult's support, and that the
16 Appointment of a Conservator is needed to obtain or provide money;

17
18 **3.** Or both, and an Appointment of a Guardian and Conservator is necessary.

19
20 **F.** If a medical evaluation is not voluntarily provided to the Court, the Court on its own Motion
21 may Order a medical evaluation by a physician or mental health professional. The examination
22 and evaluation report should contain a description of the alleged Incapacitated Adult's physical
23 and mental condition, cognitive and functional abilities and limitations, adaptive behaviors, social
24 skills, educational and developmental potential, prognosis for improvement and recommendation
25 for treatment or rehabilitation as appropriate. The professional completing the report must also
26 state his or her opinion as to whether the alleged Incapacitated Adult is impaired and in need of a
27 guardian or conservator, or both, and whether the person could meaningfully participate in the
28 proceedings.

29
30 **G.** The Court may also weigh any of the following as evidence:

31
32 **1.** Testimony from family or friends familiar with the alleged Incapacitated Adult;

33
34 **2.** Medical and financial records relevant to the alleged Incapacitated Adult or their
35 ability to care for themselves;

1
2 **3.** Any other evidence the Court determines to be relevant.
3

4 **4.** Refusal to submit to a Court Order medical evaluation can be used by the Court as
5 evidence of mental incapacity.
6

7 **H.** All parties are entitled to Notice and an opportunity to be heard on the record. All
8 proceedings shall be open to the public, unless the Court, on its own motion or by motion of a
9 party, determines that by the nature of the proceedings, the proceedings are to be closed. The
10 hearing shall be conducted in as informal a manner as may be consistent with orderly procedure.
11

12 **I.** For the Court to Order for Appointment of Guardian or Appointment of a Conservator, or
13 both, the Court shall make a written determination based on sufficient proof as presented to the
14 Court.
15

16 **J.** The Court should consider appointing the alleged Incapacitated Adult's agent in a Durable
17 Power of Attorney or Patient Advocate Designation, or other medical or legal representatives of
18 the alleged Incapacitated Adult.
19

20 **K.** Before the Judge signs an Order of Appointment and issues letters of guardianship or
21 conservatorship, or both, the Court shall require a written oath reflecting that the Guardian and/or
22 Conservator will faithfully discharge all duties assigned by the Court. The Guardian and/or
23 Conservator shall also sign an Acceptance of Appointment.
24

25 **L. Appointment of a Guardian.** The Court shall grant a Guardian only those powers and
26 only for that period of time as is necessary to provide for the demonstrated need of the
27 Incapacitated Adult. The Court shall design the guardianship to encourage the development of
28 maximum self-reliance and independence in the Incapacitated Adult. A Court Order establishing
29 a guardianship shall specify any limitations on the Guardian's powers and any time limits on the
30 guardianship. At any time, the Court may require the guardian to develop and file with the Court
31 a plan of care of the Incapacitated Adult.
32

33 **M.** Powers and Duties of a Guardian.
34

1 **1.** A Full Guardian is responsible for the Incapacitated Adult 's care, custody, and
2 supervision, including ensuring that the Incapacitated Adult has proper food and clothing,
3 the Incapacitated Adult lives in a place that is appropriate for him or her, the Incapacitated
4 Adult's medical needs are met, and the Incapacitated Adult's property is safe. A Limited
5 Guardian is responsible for only those duties stated in the Court Order.
6

7 **2.** In the absence of a valid Patient Advocate Designation, the Guardian will make the
8 medical decisions.
9

10 **3.** The Guardian must visit the Incapacitated Adult at least quarterly or as directed by
11 the Court Order, but no less than once a year, the Guardian must prepare a report on the
12 condition of the Incapacitated Adult and file the report with the Court. The Guardian must
13 give copies of the report to the Incapacitated Adult and all interested persons as defined by
14 the Statute. The Court will review any guardianship plan, prior orders in the case, and any
15 accountings and previous reports or accountings, including all costs and fees charged by
16 the guardian.
17

18 **4.** If a Conservator is not appointed, the Guardian may take control of and manage the
19 Incapacitated Adult 's funds and property for the benefit of the Incapacitated Adult. The
20 funds or property are used for the Incapacitated Adult's support, care, and education. Any
21 amount not used is saved for the Incapacitated Adult's needs.
22

23 **N. Appointment of a Conservator.** The Court shall grant a Conservator only those powers
24 and only for that period of time as is necessary to provide for the demonstrated need of the
25 Incapacitated Adult. The Court shall design the conservatorship to encourage the development of
26 maximum self-reliance and independence in the Incapacitated Adult. A Court Order establishing
27 a conservatorship shall specify any limitations on the conservator's powers and any time limits on
28 the conservatorship.
29

30 **O. Powers and Duties of a Conservator.**
31

32 **1.** A Conservator may expend or distribute estate income or principal without court
33 authorization or confirmation for the support, education, care, or benefit of the
34 Incapacitated Adult or the Incapacitated Adult 's dependents in accordance with the
35 following principles:

- 1
- 2 **a.** the action taken be in the best interest of the Incapacitated Adult, exercising
- 3 sound judgment and avoiding conflicts of interest;
- 4 **b.** the action is reasonably necessary for the support, education, care, or benefit
- 5 of the protected Incapacitated Adult or a dependent.
- 6

7 **2.** A Conservator shall not sell or otherwise dispose of the protected Incapacitated

8 Adult's principal dwelling, real property, or interest in real property or mortgage, pledge,

9 or cause a lien to be placed on any such property without approval of the Court. The Court

10 shall only approve the sale, disposal, mortgage, or pledge of or lien against the principal

11 dwelling, real property, or interest in real property if the Court considers evidence of the

12 value of the property and otherwise determines that the sale, disposal, mortgage, pledge,

13 or lien is in the protected Incapacitated Adult's best interest.

14

15 **3.** The Court shall require the Conservator promptly file a fiduciary bond and provide

16 an inventory of the Incapacitated Adult's property to the Court and deliver copies to the

17 Incapacitated Adult and other parties as required by the Court.

18

19 **4.** Conservators shall file at a minimum an annual report to the Court that provides an

20 update on the condition of the protected Incapacitated Adult and an accounting of funds

21 collected and funds expended on behalf of the Incapacitated Adult. The reports shall be

22 available for review by interested parties. The Court will review any conservatorship plan,

23 prior orders in the case, and any accountings and previous reports or accountings, including

24 all costs and fees charged by the Conservator.

25

26 **5.** Conservators shall schedule annual review hearings in conjunction with the filing

27 of annual reports. Any interested party may request additional hearings.

28

29 **6.** Conservators do not have power to consent to medical treatment, to choose where

30 an Incapacitated Adult lives, or to control day-to-day activities.

31

32 **SECTION XVIII. COURT COSTS AND FEES**

33

1 **A.** The Court may require payment of costs and fees for filing a petition with the Court.
 2 Costs and fees may be waived if a person is unable to pay by reason of indigence. Any costs for
 3 filing of a petition by the Department shall be waived.

4
 5 **B.** Costs and fees may be allowed for the following:

- 6
- 7 **1.** Any professional services ordered performed by the Court.
- 8
- 9 **2.** Counsel for the Incapacitated Adult when counsel is appointed by the Court.
- 10
- 11 **3.** Counsel for the petitioner and any respondent.
- 12
- 13 **4.** Other costs and fees may be allowed and paid as are allowed by law for similar
 14 services in other cases.

15
 16 **C.** The costs shall be taxed to the estate of the Incapacitated Adult, to those bound by law to
 17 support the Incapacitated Adult, to other parties whenever it would be just and equitable to do so.

18
 19
 20 **SECTION XIX. ADDITIONAL REPORTING REQUIRMENTS OF GUARDIAN**
 21 **AND/OR CONSERVATOR**

22
 23 **A.** The Court may determine whether or not a report or accounting shows reasonable
 24 administration of the guardianship or conservatorship, or both, whether the fiduciary is
 25 performing his or her duties and responsibilities, and whether the fiduciary's powers should be
 26 expanded or limited or any other modifications made.

27
 28 **B.** The Court may then set a hearing on the matter.

29
 30 **C.** In addition to the usual annual reports and accountings, the Court may order additional
 31 filing of a special report or accounting if specific circumstances require it.

32
 33 **D.** The Court will require a reporting of any of the following:

- 34
- 35 **1.** Change of address of the guardian or conservator.

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- 2. Change of residence or placement of the Incapacitated Adult.
- 3. Significant change in the health or impairment of the Incapacitated Adult.
- 4. The acquisition, receipt or accumulation of property or income by the Incapacitated Adult which would cause the value of the Incapacitated Adult 's estate to equal or exceed \$10,000.
- 5. The death of the Incapacitated Adult.
- 6. A change in the circumstances of the guardian, or conservator, Incapacitated Adult that may constitute a conflict of interest.

SECTION XX. RIGHTS OF VULNERABLE ELDER AND ADULT, OR INCAPACITATED ADULT

- A. The alleged Vulnerable Elder and Adult, or Incapacitated Adult shall be informed of any investigation as it begins, unless an emergency exists and shall have the ability to receive any investigation reports.
- B. Elders or Adults are presumed to possess capacity until a court of competent jurisdiction determines otherwise.
- C. The alleged Vulnerable Elder and Adult, or Incapacitated Adult may refuse to allow investigators into their home without a warrant for entry.
- D. The alleged Vulnerable Elder and Adult, or Incapacitated Adult has the right to attend all proceedings pertaining to the suspected abuse, neglect or exploitation, or guardians or conservatorship unless the Court determines the Elders or adult’s health is at risk in attending such proceedings based on medical reports and records.

1 **E.** The alleged Vulnerable Elder and Adult, or Incapacitated Adult has the right to receive any
 2 documents presented to the Court at any or all court proceedings pertaining to the suspected abuse,
 3 neglect or exploitation, or guardian or conservatorship.

4
 5 **F.** The alleged Vulnerable Elder and Adult, or Incapacitated Adult has the right to
 6 independent medical, psychological or psychiatric evaluations at their own expense.

7
 8
 9 **SECTION XXI. RESTORATION TO CAPACITY PROCEDURES**

10
 11 **A.** An adult in need of a guardian or a conservator, or both, may be restored to capacity.

12
 13 **B.** Upon a petition being filed, the Court must review to determine whether probable cause
 14 exists to warrant further proceedings. If probable cause is found, the Court shall set the petition
 15 for hearing and may appoint an attorney for the alleged Incapacitated Adult. If probable cause
 16 does not exist, the Court may dismiss the petition.

17
 18 **C.** At the conclusion of the hearing, if the Court does not find by clear and convincing
 19 evidence, that the alleged Incapacitated Adult is an Adult with an impairment in need of a
 20 guardian or a conservator, or both, the Court shall order that the Adult is restored to capacity and
 21 shall proceed to terminate the guardianship or conservatorship, or both.

22
 23
 24 **SECTION XXII. TERMINATION OF GUARDIANSHIP AND CONSERVATORSHIP**

25
 26 **A.** The Court at any time may enter an order summarily terminating a guardianship or a
 27 conservatorship in any of the following circumstances:

- 28
 29 **1.** The Incapacitated Adult is deceased.
 30
 31 **2.** No further need for the guardianship or conservatorship exists.
 32
 33

34 **SECTION XXIII. SAVING CLAUSE**
 35

1 In the event that any phrase, provision, part, paragraph, subsection or section of this Statute is
2 found by a court of competent jurisdiction to violate the Constitution, laws, ordinances or statutes
3 of the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, part, paragraph,
4 subsection or section shall be considered to stand alone and to be deleted from this Statute, the
5 entirety of the balance of the Statute to remain in full and binding force and effect.

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SECTION XXIV. EFFECTIVE DATE

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10 Effective upon signature of the Executive or 30 days from Tribal Council approval whichever
11 comes first or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

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CERTIFICATION

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