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**WAGANAKISING ODAWAK STATUTE # \_\_\_\_\_**  
**VULNERABLE ELDER AND ADULT, OR INCAPACITATED ADULT, PROTECTION**  
**STATUTE**

**SECTION I.           PURPOSE**

The purpose of this Statute is to protect Vulnerable Elders and Adults from abuse, neglect, or exploitation as defined by this Statute and provide for services and court action for Vulnerable Elders and Adults, and appoint guardianship and conservatorships for Incapacitated Adults, if necessary. This Statute repeals and replaces any previous Adult Welfare Code, including WOS 2015-012, WOS 2005-07.

**SECTION II.           DEFINITIONS**

- A.** "Abuse" means
  - 1.** An intentional or negligent infliction of bodily injury, unreasonable confinement, intimidation, emotional abuse or cruel punishment of a Vulnerable Elder and Adult which result in physical pain or mental anguish; or
  - 2.** Sexual abuse is physical contact without consent of a Vulnerable Elder and Adult with the intent to derive sexual gratification by the person making contact. Consent may not be obtained by threat, coercion, intimidation or fraud.
- B.** "Caretaker" means a person who is required by court of competent jurisdiction to provide services or resources to a Vulnerable Elder and Adult.
- C.** "Conservator" means a person appointed by a court of competent jurisdiction who is responsible for the collection, preservation, and investment of an Incapacitated Adult's property.

- 1 **D.** “Department” means the Little Traverse Bay Bands of Odawa Indians Department of  
2 Human Services.  
3
- 4 **E.** “Emergency” means a situation in which a Vulnerable Elder and Adult is immediately at  
5 risk of death or injury and is unable to consent to services to remove the risk.  
6
- 7 **F.** “Exploitation” means the improper or unauthorized use of a Vulnerable Elder and Adult’s  
8 funds, property or other resources or failure to use a Vulnerable Elder and Adult’s funds,  
9 property or resources as a Vulnerable Elder and Adult’s desire or for their benefit.  
10
- 11 **G.** “Family” means any spouse, parent, child, stepparent, stepchild, grandparent,  
12 grandchild, or significant other person or relative with whom a Vulnerable Elder and Adult  
13 which has a familial relationship, or who resides with a Vulnerable Elder and Adult.  
14
- 15 **H.** “Guardian” means a person appointed by a court of competent jurisdiction to exercise the  
16 duty and authority to provide care and control of an Incapacitated Adult, under the Tribal Court’s  
17 jurisdiction.  
18
- 19 **I.** "Good Faith" means an honest and reasonable belief or purpose, and the lack of intent to  
20 defraud.  
21
- 22 **J.** “Incapacitated Adult” means a Vulnerable Elder or Adult, because of physical or  
23 psychological infirmities, lacks the understanding or capacity to make or communicate informed  
24 decisions or is unable to manage property and business affairs effectively and needs a  
25 guardianship and/or conservatorship.  
26
- 27 **K.** "Least restrictive alternative" means whenever it is necessary to protect a Vulnerable  
28 Elder and Adult, or Incapacitated Adult, the least restrictive method of intervention shall be used  
29 to protect the freedom and independence of a Vulnerable Elder and Adult, or Incapacitated  
30 Adult; the least restrictive alternative is that environment which is the most like a Vulnerable  
31 Elder and Adult, or Incapacitated Adult’s home setting and which is most capable of supporting  
32 the protected person's physical and mental health; and emotional well-being.  
33
- 34 **L.** “LTBB” or “Tribe” or “Tribal” means the Little Traverse Bay Bands of Odawa Indians.  
35

1 **M.** "Neglect" means the failure of someone with fiduciary or legal responsibility to provide  
2 necessary services or resources to maintain the health or safety of a Vulnerable Elder and Adult,  
3 or self-neglect caused by the inability of the adult to provide themselves with basic food,  
4 clothing, shelter and medical care due to mental incompetency or physical disability.

5  
6 **N.** "Party" or "interested party" means the Vulnerable Elder and Adult's family, caretaker,  
7 and any other person that has an interest in the welfare of a Vulnerable Elder or Adult. The  
8 Court shall have the power to determine who is or is not a party or interested party in any court  
9 proceeding.

10  
11 **O.** "Prosecutor" means the Little Traverse Bay Bands of Odawa Indians Prosecutor.

12  
13 **P.** "Protective placement" means the placement of a Vulnerable Elder and Adult, in a  
14 hospital, nursing home, residential care facility, other suitable placement, or transfer from one  
15 facility to another with consent of that person or with appropriate legal authority.

16  
17 **Q.** "Protective services" means services provided to a Vulnerable Elder and Adult, with  
18 consent or by order of appropriate legal authority which includes but is not limited to: social  
19 services, mental and physical health examinations, home and day care, legal assistance,  
20 guardianship, case management and any other services consistent with this Statute.

21  
22 **R.** "Substantiated Report" means when there is probable cause of abuse after an  
23 investigation conducted by the Department. The report is sent to the Tribal Prosecutor for further  
24 steps to be taken.

25  
26 **S.** "Tribe" or "Tribal" means the Little Traverse Bay Bands of Odawa Indians.

27  
28 **T.** "Tribal Court" means the Little Traverse Bay Bands of Odawa Indians Tribal Court.

29  
30 **U.** "Vulnerable Elder and Adult" means an Elder who is fifty-five (55) years old or older or  
31 an Adult who is eighteen (18) years old or older and is unable to protect themselves from abuse,  
32 neglect or exploitation due to mental incompetency or physical disability.

1 V. “Unsubstantiated Report” means when no probable cause exists after an investigation.  
2 These reports are filed within the Department for reference as needed.  
3  
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5 **SECTION III. AUTHORITY**  
6

7 A. Pursuant to provisions of the Tribal Constitution, including Article I, B, 2. *“Promote with*  
8 *special care the health, educational and economic interests of all the people, especially our*  
9 *children and Elders, and shall protect them from social injustice and all forms of exploitation;*  
10 *and 4. “Establish and maintain within the limits of their economic capacity and development,*  
11 *effect provision for securing the right to work, to education and assistance, in cases of*  
12 *unemployment, old age, sickness and disablement, and in other cases of need”.*  
13

14 B. Pursuant to provisions of the Tribal Constitution, including Article VI., C. “... the  
15 Executive Branch to administer such funds, enforce this Constitution and laws passed  
16 thereunder, and implement policies and procedures enacted by the Tribal Council in accordance  
17 with Article VIII”, Article VII of the Tribal Constitution allows the Legislative Branch to  
18 *approve the creation or dissolution of Executive divisions or departments to promote and protect*  
19 *the peace, health, safety, education and general welfare of Little Traverse Bay Bands of Odawa*  
20 *Indians and its members.*  
21  
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23 **SECTION IV. JURISDICTION**  
24

25 A. The Little Traverse Bay Bands of Odawa Indians shall have jurisdiction over the  
26 following:  
27

28 1. A Tribal Vulnerable Elder and Adult who is unable to protect themselves from  
29 suspected abuse, neglect or exploitation due to mental incapacity or physical disability  
30 and is an enrolled Citizen of Little Traverse Bay Bands of Odawa Indians who resides  
31 within the exterior boundaries of the Reservation or residing within Tribal Trust Lands;  
32

1           **2.**       Vulnerable Elder and Adult who is unable to protect themselves from suspected  
2           abuse, neglect or exploitation due to mental incapacity or physical disability who resides  
3           within Tribal Trust Lands;

4  
5           **3.**       A Tribal Vulnerable Elder and Adult, because of physical or psychological  
6           infirmities, lacks the understanding or capacity to make or communicate informed  
7           decisions or is unable to manage property and business affairs effectively and needs a  
8           guardianship and/or conservatorship and is an enrolled Citizen of Little Traverse Bay  
9           Bands of Odawa Indians who resides within the exterior boundaries of the Reservation or  
10          resides within Tribal Trust Lands;

11  
12          **4.**       A Vulnerable Elder and Adult, because of physical or psychological infirmities,  
13          lacks the understanding or capacity to make or communicate informed decisions or is  
14          unable to manage property and business affairs effectively and needs a guardianship  
15          and/or conservatorship who resides within Tribal Trust Lands;

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

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25       **SECTION V.                   DUTY TO REPORT**

26  
27       **A.**       It is the reporting duty of any person who have reason to suspect that a Vulnerable Elder  
28       and Adult is abused or neglected or a Guardian and/or Conservator is abusing or neglecting an  
29       Incapacitated Adult, which shall contact the Department.

30  
31       **B.**       It is mandated by this Statute for the following to report to the Department any suspected  
32       abuse, neglect or exploitation of a Vulnerable Elder and Adult, or a Guardian and/or Conservator  
33       is abusing or neglecting an Incapacitated Adult immediately or as soon after that is reasonably  
34       possible:

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

3  
4           **2.**       Law Enforcement;

5  
6           **3.**       Tribal employee(s) who provide services to Vulnerable Elder and Adult, or  
7           Incapacitated Adult, of the following departments:

- 8  
9                   **a.** Education  
10                   **b.** Elders  
11                   **c.** Health  
12                   **d.** Housing  
13                   **e.** Human Services  
14                   **f.** Language

15  
16           **4.**       Elected or appointed official of the Tribe;

17  
18   **C.**       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.         FAILURE TO REPORT; CIVIL PENALTY**

29

30   If found responsible, after a fair hearing of the court, a person mandated to report who fails to  
31   report suspected Vulnerable Elder and Adult, or Incapacitated Adult’s abuse, neglect, or  
32   exploitation as required by this Statute may be subject to a civil fine not to exceed five-thousand  
33   (\$5,000.00) dollars.

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**SECTION VIII. 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 IX. 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 X. HUMAN SERVICES DEPARTMENT DUTIES, RESPONSIBILITIES and AUTHORITY**

**A.** The Department shall be responsible to initiate an investigation, upon receiving a report of a Vulnerable Elder and Adult's abuse, neglect or exploitation, or a Guardian and/or Conservator is abusing or neglecting an Incapacitated Adult.

**B.** The Department shall investigate all reports. The Department shall investigate upon receipt of the report of abuse, neglect or exploitation within twenty-four (24) hours, meet face to face with the alleged victim within seventy-two (72) hours and complete the investigation with a written report within thirty (30) consecutive days based upon:

- 1.** Personal interviews with the alleged abused, neglected or exploited Vulnerable Elder and Adult, or Incapacitated Adult, the immediate family and caretaker, suspected

1 abuser, employees of agencies (if involved), and any other person who may have  
2 pertinent information;

3  
4 2. Medical records and other evidence of abuse;

5  
6 3. Assessments of a Vulnerable Elder and Adult, or Incapacitated Adult's living  
7 conditions;

8  
9 4. Any other observations, assessments or documents that may aid in completing an  
10 accurate report.

11  
12 C. Based on the investigation, if the Department believes that there is evidence of  
13 Vulnerable Elder and Adult, or Incapacitated Adult's abuse, neglect or exploitation, the  
14 Department will submit the report to the Prosecutor.

15  
16 D. The Department shall have the authority to obtain from all Tribal Governmental  
17 Departments, Agencies and Programs information and assistance with the Department's  
18 investigations of suspected Vulnerable Elder and Adult, or Incapacitated Adult, abuse, neglect or  
19 exploitation. This shall include information sharing without the need of signed releases.

20  
21  
22 **SECTION XI. LAW ENFORCEMENT DUTIES AND RESPONSIBILITIES**

23  
24 A. Upon the request of the Department, Law Enforcement shall assist the Department in  
25 conduct of an investigation within twenty-four (24) hours, if one or more of the following  
26 conditions exist:

27  
28 1. Abuse or neglect is the suspected cause of death of a Vulnerable Elder and Adult,  
29 or Incapacitated Adult;

30  
31 2. A Vulnerable Elder and Adult, or Incapacitated Adult, is the victim of suspected  
32 sexual abuse or sexual exploitation;



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

8  
9           **4.** Law Enforcement intervention is necessary for the protection of a Vulnerable  
10          Elder and Adult, or Incapacitated Adult, Department staff, or another person involved in  
11          the investigation; or

12  
13          **5.** The alleged perpetrator of abuse, neglect or exploitation of a Vulnerable Elder  
14          and Adult, or Incapacitated Adult, is not a person responsible for the health or welfare of  
15          the Vulnerable Elder and Adult, or Incapacitated Adult.

16  
17 **B.** Law Enforcement shall be responsible to determine and investigate if any other criminal  
18 acts are alleged and shall forward this information to the Prosecutor.

19  
20  
21 **SECTION XII. PROSECUTOR’S DUTIES AND RESPONSIBILITIES**

22  
23 **A.** The Prosecutor is authorized by this Statute to petition the Court for Emergency  
24 Protection Orders and Non-Emergency Protection Orders for protection of Vulnerable Elders and  
25 Adults from abuse, neglect or exploitation, or a Guardian and/or Conservator is abusing or  
26 neglecting an Incapacitated Adult, upon receipt of a report of investigation from the Department.

27  
28 **B.** The Prosecutor is authorized by this Statute to represent the Tribe in matters of protection  
29 of Vulnerable Elder and Adult from abuse, neglect or exploitation, or a Guardian and/or  
30 Conservator who is abusing or neglecting an Incapacitated Adult, upon request of the  
31 Department.

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34 **SECTION XIII. PETITIONS AND EMERGENCY ORDERS**

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**A.** Any concerned or interested party may file a Petition for an Emergency Protection Order (EPO) directly with the court of suspected Vulnerable Elder and Adult’s abuse, neglect or exploitation, or a Guardian and/or Conservator is abusing or neglecting an Incapacitated Adult.

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

- 1.** A person is a Vulnerable Elder and Adult, or Incapacitated Adult; and
- 2.** The Vulnerable Elder and Adult, or Incapacitated Adult, is at risk of immediate abuse, neglect or exploitation.

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

- 1.** Specific emergency services to be provided to remediate the emergency;
- 2.** Protective placement only if the evidence indicates that it is absolutely necessary;
- 3.** Designation of a person or agency required to implement the order; and
- 4.** A warrant for forcible entry by Tribal Law Enforcement, if requested and documented attempts to gain voluntary access have failed.

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

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

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

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7 **SECTION XIV. EMERGENCY PLACEMENT**

8

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

16

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

20

21 **SECTION XV. PETITIONS AND NON-EMERGENCY PROTECTION ORDER**

22

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

26

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

28

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

31

32 **B.** All parties are entitled to Notice and an opportunity to be heard on the record. All  
33 proceedings shall be open to the public, unless the Court, on its own motion or by motion of a  
34 party, determines that by the nature of the proceedings, the proceedings are to be closed.

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

1. Appointing Guardian ad Litem for the Vulnerable Elder and Adult or Incapacitated Adult to enter other orders for the protection of the Vulnerable Elder and Adult, or Incapacitated Adults.
2. Order the Department to prepare petitions for Guardianship and/or Conservatorship if the Vulnerable Elder or Adult is believed to be an Incapacitated Adult; or order the Department for file a request for a termination of the current Guardian and/or Conservator for an Incapacitated Adult, and prepare petitions for a new appointment;
3. Removal from the place where the abuse or neglect occur(ed) including the Vulnerable Elder and Adult, or Incapacitated Adult’s home;
4. Remove the abuser from the residence to prohibit further abusive acts;
5. Requiring any party having a fiduciary duty to the Vulnerable Elder and Adult, or a Guardian and/or Conservator for Incapacitated Adult, to account for the Vulnerable Elder and Adult, or Incapacitated Adult’s funds and/or property.

D. Protective orders authority shall not exceed 180 days; Guardianship and/or conservatorship may be temporary or permanent.

**SECTION XVI. PETITION FOR FINDING OF VULNERABILITY ELDER OR ADULT as INCAPACITATED and APPOINTMENT OF GUARDIAN OR CONSERVATOR**

A. Any concerned or interested party may file a petition for Finding of a Vulnerable Elder or Adult as an Incapacitated Adult and request an Order for Appointment of Guardian or an Order for Appointment of a Conservator.

1 **B.** The petitioner will mail copies of the petition and notice of the hearing to all interested  
2 persons who include the following people:

3  
4 **1.** The individual's spouse;

5  
6 **2.** If known, a person named as the individual's agent in a Durable Power of  
7 Attorney or Patient Advocate Designation, or other medical or legal representatives;

8  
9 **3.** The individual's children (or, if the individual has no children, the individual's  
10 parents); and

11  
12 **4.** If there is one, the individual's Guardian or Conservator appointed by a Court in  
13 another state.

14  
15 **C.** The Court shall appoint Guardian ad Litem to represent the alleged incapacitated person,  
16 unless the individual has his or her own attorney. The alleged incapacitated individual and these  
17 interested persons are entitled to object to the appointment of a Guardian or Conservator.

18  
19 **D.** The Court may issue an Order for Appointment of Guardian or Appointment of a  
20 Conservator, after a hearing which shall be held, if there is a showing, upon clear and convincing  
21 evidence based a detailed description of the individual's physical or psychological infirmities by  
22 a physician or mental health professional and an explanation of how and to what extent each  
23 infirmity interferes with the individual's ability make decisions on the following:

24  
25 **1.** The person lacks the understanding or capacity to make or communicate informed  
26 decisions, and the appointment of a guardian is necessary to provide for the individual's  
27 continuing care and supervision;

28  
29 **2.** The person is an adult who is unable to manage property and business affairs  
30 effectively for reasons such as mental illness, mental deficiency, physical illness or  
31 disability, chronic use of drugs, chronic intoxication, confinement, or disappearance, and  
32 the person has property that will be wasted or dissipated unless the Appointment of a  
33 Conservator is provided, or money is needed for the individual's support, care, and

1 welfare or for those entitled to the individual's support, and that the Appointment of a  
2 Conservator is needed to obtain or provide money;

3  
4 **3.** Or both, and an Appointment of a Guardian and Conservator is necessary.  
5

6 **E.** If a medical evaluation is not voluntarily provided to the Court, the Court on its own  
7 Motion may Order a medical evaluation by a physician or mental health professional.  
8

9 **F.** The Court may also weigh any of the following as evidence:  
10

11 **1.** Testimony from family or friends familiar with the Vulnerable Elder and Adult;

12  
13 **2.** Medical and financial records relevant to the Vulnerable Elder and Adult or their  
14 ability to care for themselves;

15  
16 **3.** Any other evidence the Court determines to be relevant.  
17

18 **4.** Refusal to submit to a Court Order medical evaluation can be used by the Court as  
19 evidence of mental incapacity.  
20

21 **G.** All parties are entitled to Notice and an opportunity to be heard on the record. All  
22 proceedings shall be open to the public, unless the Court, on its own motion or by motion of a  
23 party, determines that by the nature of the proceedings, the proceedings are to be closed.  
24

25 **H.** For the Court to Order for Appointment of Guardian or Appointment of a Conservator,  
26 the Court shall make a written determination based on sufficient proof as presented to the court.  
27

28 **I.** The Court should consider appointing the individual's agent in a Durable Power of  
29 Attorney or Patient Advocate Designation, or other medical or legal representatives of the  
30 individual.  
31

32 **J.** The Judge will sign an Order of Appointment. The Guardian and/or Conservator shall  
33 sign an Acceptance of Appointment.  
34

1 **K. Appointment of a Guardian.** The Court shall grant a Guardian only those powers and  
2 only for that period of time as is necessary to provide for the demonstrated need of the  
3 incapacitated individual. The Court shall design the guardianship to encourage the development  
4 of maximum self-reliance and independence in the individual. A Court Order establishing a  
5 guardianship shall specify any limitations on the Guardian's powers and any time limits on the  
6 guardianship.

7  
8 **L. Powers and Duties of a Guardian.**

9  
10 **1.** A Full Guardian is responsible for the individual's care, custody, and supervision,  
11 including ensuring that the individual has proper food and clothing, the individual lives in  
12 a place that is appropriate for him or her, the individual's medical needs are met, and the  
13 individual's property is safe. A Limited Guardian is responsible for only those duties  
14 stated in the Court Order.

15  
16 **2.** In the absence of a valid Patient Advocate Designation, the Guardian will make  
17 the medical decisions.

18  
19 **3.** The Guardian must visit the individual at least quarterly or as directed by the  
20 Court Order and at least once a year, the Guardian must prepare a report on the condition  
21 of the Vulnerable or Incapacitated individual and file the report with the Court. The  
22 Guardian must give copies of the report to the Vulnerable or Incapacitated individual and  
23 all interested persons as defined by the Statute.

24  
25 **4.** If a Conservator is not appointed, the Guardian may take control of and manage  
26 the Incapacitated individual's funds and property for the benefit of the individual(s). The  
27 funds or property are used for the individual's support, care, and education. Any amount  
28 not used is saved for the individual's needs.

29  
30 **M. Appointment of a Conservator.** The Court shall grant a Conservator only those powers  
31 and only for that period of time as is necessary to provide for the demonstrated need of the  
32 incapacitated individual. The Court shall design the conservatorship to encourage the  
33 development of maximum self-reliance and independence in the individual. A Court Order

1 establishing a conservatorship shall specify any limitations on the conservator's powers and any  
2 time limits on the conservatorship.

3  
4 **N. Powers and Duties of a Conservator.**

5  
6 **1.** A Conservator may expend or distribute estate income or principal without court  
7 authorization or confirmation for the support, education, care, or benefit of the protected  
8 individual or the protected individual's dependents in accordance with the following  
9 principles:

10  
11 **a.** the action taken be in the best interest of the individual, exercising sound  
12 judgment and avoiding conflicts of interest;

13 **b.** the action is reasonably necessary for the support, education, care, or  
14 benefit of the protected individual or a dependent.

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16 **2.** A Conservator shall not sell or otherwise dispose of the protected individual's  
17 principal dwelling, real property, or interest in real property or mortgage, pledge, or cause  
18 a lien to be placed on any such property without approval of the Court. The Court shall  
19 only approve the sale, disposal, mortgage, or pledge of or lien against the principal  
20 dwelling, real property, or interest in real property if the court considers evidence of the  
21 value of the property and otherwise determines that the sale, disposal, mortgage, pledge,  
22 or lien is in the protected individual's best interest.

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24 **3.** The Court shall require the Conservator promptly file a fiduciary bond and  
25 provide an inventory of the individual's property to the Court and deliver copies to the  
26 individual and other parties as required by the Court.

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28 **4.** Conservators shall file an annual report to the Court providing an update on the  
29 condition of the protected individual and an accounting of funds collected and funds  
30 expended on behalf of the individual. The reports shall be available for review by  
31 interested parties.

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33 **5.** Conservators shall schedule annual review hearings in conjunction with the filing  
34 of annual reports. Any interested party may request additional hearings.



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6. Conservators do not have power to consent to medical treatment, to choose where an individual lives, or to control day-to-day activities.

**SECTION XVII. CONFIDENTIALITY OF REPORTER and RECORDS**

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

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

**SECTION XVIII. RIGHTS OF VULNERABLE ELDER AND ADULT, OR INCAPACITATED ADULT**

A. A 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. A Vulnerable Elder and Adult, or Incapacitated Adult may refuse to allow investigators into their home without a warrant for entry.

D. The 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.

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

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

**SECTION XIX. SAVING CLAUSE**

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

**SECTION XX. EFFECTIVE DATE**

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

**CERTIFICATION**