

Supported Decision Making for Adults with Cognitive Impairments and How It Compares with Adult Guardianship

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Resource Networks

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Supported Decision Making for Older Adults with Cognitive Impairments

- Today:



- First Guardianship and Less Restrictive Alternatives
- Then “Supported Decision Making”

Guardianship....

- Facts about Mr. “M”
 - 78 years old, living alone
 - Early symptoms of dementia
 - Exploiting Caregiver
 - APS finds an attorney to file for guardianship
 - Court appoints guardian of person and estate
 - Full control of all decision making



Guardianship....

- Guardian



Removes Mr. M from home and places him in a locked assisted living unit

Sells the house and several other rental properties belonging to Mr. M

Mr. M loses his freedom and all his assets

This has been standard practice in the past

Guardianship....

- But...this is NOT Best Practice!
- The Guardian
 - Made no attempt to hear from Mr. M about his needs and preferences
 - Conducted no search for family
 - Did no person-centered planning
 - Did no search for less restrictive alternatives to meet his needs

Guardianship....

- Good Guardianship – My Passion
- Not bashing the concept, but it is about controlling the person's life
- Works well if the person REALLY needs it
- How do we know if they do?



MEMBER
National Guardianship Association

Guardianship.....

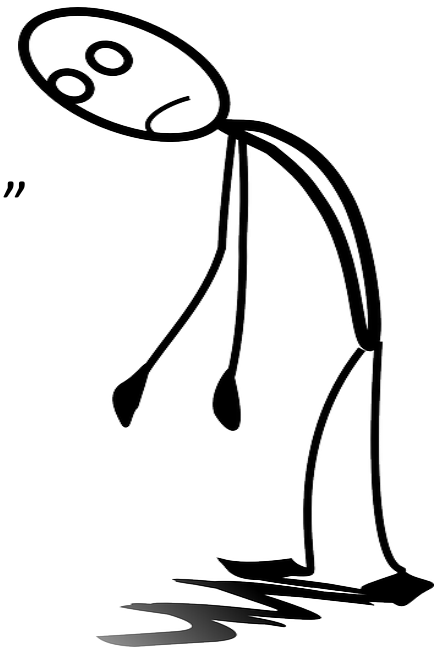
Why we Want to Use the least restrictive and least intrusive alternative to assist an adult

“Guardianship returns the adult to the legal status of a child.”

» Pam Teaster and Winsor Schmidt, University of Kentucky

Guardianship...

- If the adult has any capacity
 - Can be a humiliating and expensive process
 - Loss of choice and control
 - Loss of the normal rhythm of life
 - Public pronouncement of “incompetency”



Guardianship....

Less Restrictive Alternatives

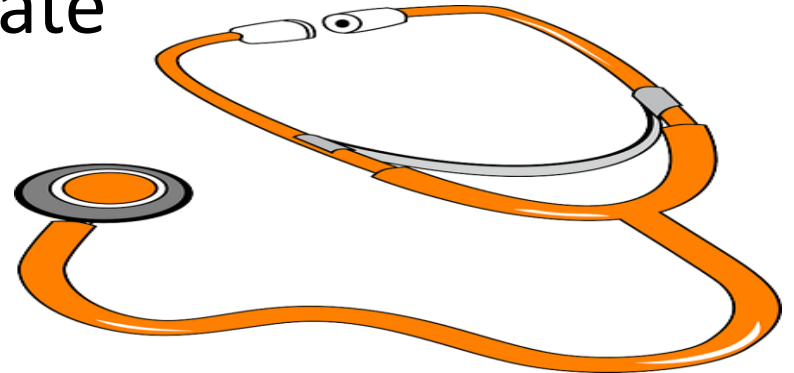
For Medical and other Personal Services:

Durable Power of Attorney – Agent

Living Will – Terminal or Permanent

Unconscious State

DNR Order



Guardianship....

Less Restrictive Alternatives, Con't.

- Conservator of the Person – court appointed advocate for an ill, competent person
- Declaration for Mental Health Treatment
- Limited Guardian for Medical Treatment
- APS Order

Guardianship....

Less Restrictive Alternatives

- New Concept from the Disability Community

“Supported Decision-Making”

- Will be presented by Ronda Cress in the second half of our session today

Guardianship....

Less Restrictive Alternatives, con't

For Financial and Assets Management

Durable POA for Finances (see an Attorney)

Living Trusts and other Estate Planning

Bill Paying Services (usually with a contract)

Payee for SSA/SSI benefits

Guardianship....

Less Restrictive Alternatives, Con't.

Joint Bank Accounts (only trusted others)

Conservator of the Estate

APS Protective Order

Law Enforcement for Exploiter

Guardianship.....

- How to Decide About a Guardian?
- Four Questions
 - Functional Mental Capacity
 - Decision to be Made
 - Available Outside Resources
 - Level of Risk or Harm?



Guardianship....

Functional Mental Capacity

- Can the person
 - Care for basic needs?
 - Complete Activities of Daily Living?
 - Generate Alternatives?



Be aware that it's hard to assess this in an acute care setting such as a hospital, but this is where many guardianship referrals are begun

Guardianship....

- Three Capacity Assessment Cautions!

- 1) Avoid Assumptions

Ageism and Ableism are rampant in our culture

Stigma about labels – “MR”, “MH” or Dementia

think outside the



stigma

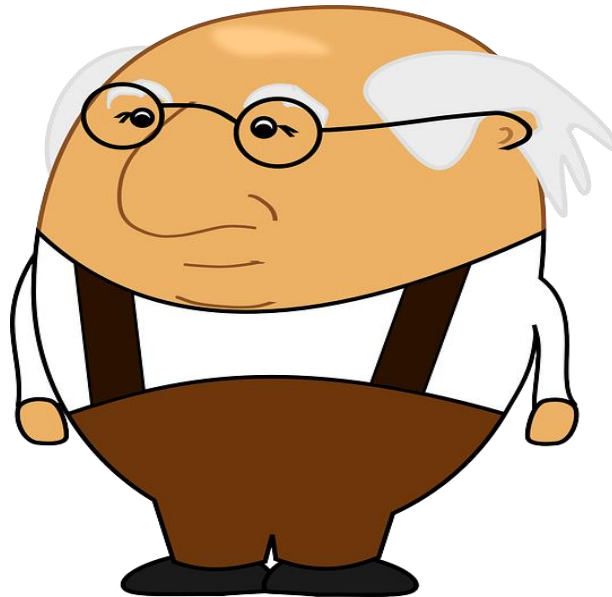
Guardianship....

- 2) People who have been in “institutional care”
 - May want to please “authority”
 - Long for friendship or attention
 - May pretend to understand or watch you for clues
 - May need more concrete explanations in order to decide

Guardianship....

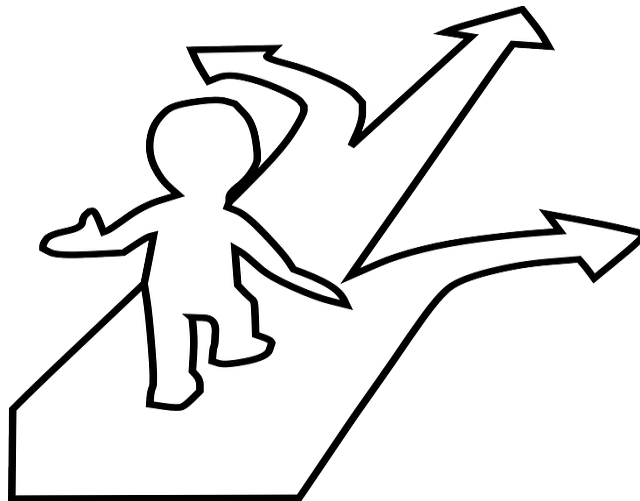
3) With Older Adults consider

- Can the person hear?
- Can the person read and write?
- Are you giving enough time to respond?



Guardianship....

- Are they in an unfamiliar setting?
- Is there confusion due to anesthesia or meds?
- Do they have a delirium, not dementia?
- Is this an Acute change,
- or long term chronic condition?



Guardianship....

Is there a decision to be made?

Surgery

Change Residence

Loss of assets



“The more complex the decision, the more we need to carefully assess whether the person can make it.”

ABA Commission on Law and Aging

Guardianship....

- Remember
 - People can be supported at home with nursing and homemaker services
 - Payee or bill paying services
 - Limited Guardian for Medical Decisions
 - Not best practice to sell the home and place person in long term care

Guardianship....

Are there Outside Resources?

- Support from family, friends, neighbors?
- Professional home or day services?
- Could there be a power of attorney, a payee or a conservator?
- Are finances limited or plentiful?

Guardianship....

What is the level of risk or harm?

- Is person at risk or being abused or exploited?
- Will mental or physical illness worsen with no action?
- Will assets or property be lost?
- Could the person die?

Guardianship....

- After Inquiries in these 4 areas
 - Is Guardianship truly necessary?
 - Is it the right thing to do?

Guardianship....

- Court Process



- County Probate Court where Person Resides
- Procedures vary by county, as do resources, so know your local court's rules

Guardianship...

- What's Required?
 - Must Have an Applicant willing to be guardian
 - Ohio has no public guardian
 - Courts have few resources
 - People without assets or family
 - may have a volunteer
 - a nonprofit, or an attorney
 - (out of state family now can be Guardian of Person)

Guardianship....

Statement of Expert Evaluation

- Person assessed as “so mentally impaired as a result of a mental or physical illness or disability, or mental retardation (sic) or as a result of chronic substance abuse”
- Assessor must be physician or clinical psychologist

Guardianship....

- Process
 - Application is filed and fees paid (@\$200)
 - Mandatory 7 days' notice to person
 - Court Investigator Serves the Person
 - Right to be present at the hearing
 - Right to be represented by counsel
 - Right to have friend or family member there
 - Right to independent expert eval
 - Right to have county pay for attorney and eval

Guardianship....

- Note about Emergency Guardianship
- Very extreme, intrusive action
 - Ex Parte – no notice or due process
 - Physician Supplement to Expert Eval required
 - Individual has no rights in this process
 - Perfunctory hearing at most

Guardianship....

Emergency Guardianship, con't.

- Purpose: “To prevent Significant Injury” to person or estate

Only 3 days' authority – then a hearing to extend for 30 days

Most courts won't use for end-of-life decisions

Should not be used for “placement”

Guardianship....

- New Rules!
 - Adopted in June, 2015, by Supreme Court
 - Rule 66.01-.09 now governs guardianship
 - Can be reviewed at www.supremecourt.ohio.gov
 - These make guardianship better, but still should be the last resort because of the loss of control

Guardianship....

- With these cautions as a framework we turn to Ronda for information about the new concept
- Supported Decision Making

