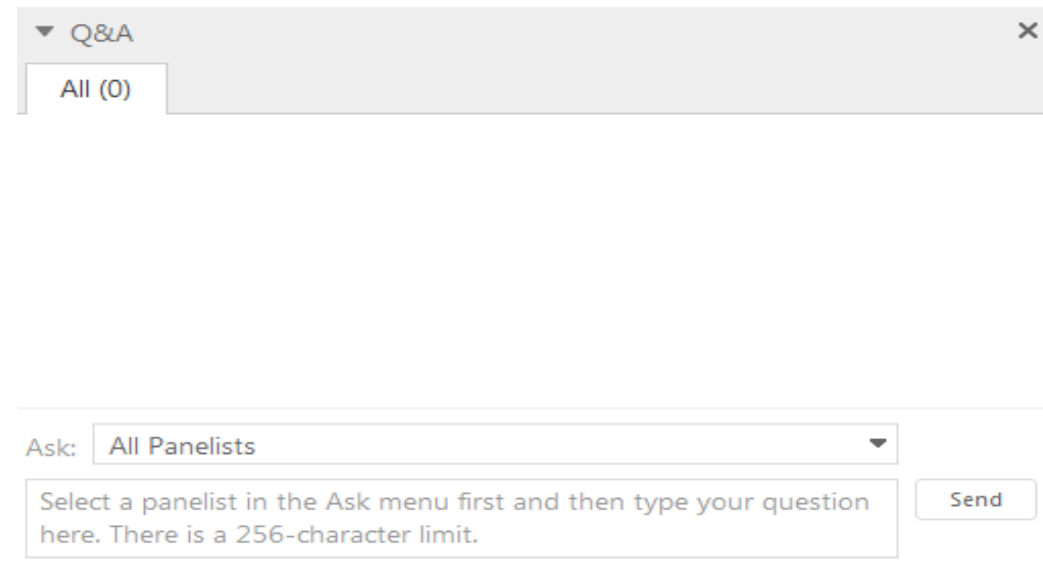




Support Planning Professional Learning Community (SPP LC)

April 17, 2019

To ask a question during the presentation use the Q&A Panel in WebEx



The screenshot shows a window titled "Q&A" with a close button (X) in the top right corner. Below the title bar, there is a tab labeled "All (0)". The main area of the window is empty. At the bottom, there is a section labeled "Ask:" with a dropdown menu currently set to "All Panelists". Below the dropdown is a text input field with the placeholder text "Select a panelist in the Ask menu first and then type your question here. There is a 256-character limit." To the right of the text input field is a "Send" button.

Select “All Panelists”, type your question, and click Send.

Announcements

Exploring the rights of people under guardianship & conservatorship

Upcoming SPP LC Webinars:

- April 24: Navigating Rights Restrictions and Modifications for Home and Community-Based Services (HCBS)
- May 29: Lead Agency Review
- June 26: Environmental Accessibility Adaptation (EAA) Home Modification Assessment and Installation for Home and Community-Based Services (HCBS)
- July 31: Canceled due to Odyssey Conference

Minnesota Age & Disability Odyssey Conference

- July 31 – August 1, 2019
- Duluth Entertainment Convention Center

Communities of Practice – DSD.RRS@state.mn.us



EXPLORING THE RIGHTS OF PEOPLE UNDER GUARDIANSHIP & CONSERVATORSHIP


Anita Raymond, LISW, CMC
Jill Tilbury, Public Guardianship Administrator

Objectives

- List powers and duties granted to guardians/conservators
- Understand rights retained by persons under guardianship/conservatorship
- Describe the tension between decision maker and provider needs for safety and quality of life and desires of the person served from legal, ethical & practical perspectives.

Part One

Guardianship Basics



Providers say
they have to let
my “ward” do
whatever
he/she wants....

Guardian

Providing
/

But I'm really
worried about
my person's
safety!!

..



Guardian



Don't forget:
I'm the
Guardian!

ay
let
out
on's
safety!!

Guardian

The Guardian is
overly controlling,
and tries to tell us
how to do our job!



Provider

I just want to....

(be like /
do things like /
experience things
like
everyone else)



Types of Guardians & Guardianships

Public

- Essentially same petitioning process as private (after approved by DHS)
- Commissioner of DHS appointed by Court
 - Designated Guardian: county employee
- Eligibility: 18+, IDD, no one else to serve, no LRA

Types of Guardians & Guardianships

Private:

Every guardianship that is not Public

- Family / Friend / etc.
- Independent
 - Volunteer
 - County Contracted Professional
 - Individual or Corporation
 - Not for Profit or For Profit

What's the Problem?

- Cell phone ownership / usage
- Internet access
- Job: yes or no? Location? Sheltered vs. general? Full time vs. part time
- Hairstyles
- Relationships

Some Guardianship Basics



Guardianship & Conservatorship: What is This?

- Court appointed substitute or surrogate decision-maker
- Voluntary or involuntary (most common)
- Guardianship/Guardian/Ward = Personal and Care Decisions
- Conservatorship/Conservator/Protected Person = Money and Assets

GUARDIANSHIP IS:

- an excellent tool....when it's necessary
- sometimes the only way to protect a person living with vulnerabilities
- sometimes the only way to meet the person's own goals
- to be utilized only in extreme circumstances when there is no other way to protect person/meet goals: last resort

Can Guardianship Make Things Worse?

Risk of “mission creep”

- Well-intended, worried guardian
- Fears of liability
- Power and control
- Providers (and person) turn to guardian for *all* decisions

Can Guardianship Make Things Worse?

Medical Orders vs. Quality of Life
(medications, special diets, smoking, sweets, etc.)



Can Guardianship Make Things Worse?

Dignity of Risk / Choice vs. Safety



Can Guardianship Make Things Worse?

Loss of sense of power /
self-determination = potential for

- increased resistance
- reduced cooperation
- decreased sense of self-worth

Research: Guardianship, Self-Determination & Maltreatment

- “Older adults with more self-determination have improved psychological health including better adjustment to increased care needs” O’Conner & Vallerand, Canadian Journal on Aging, 1994
- “Women with intellectual disabilities exercising more self-determination are less likely to be abused.” Khemka, Hickson, and Reynolds, 2005

Research: Guardianship, Self-Determination & Maltreatment

Labeling person ‘incompetent’ impacts:

- how others view person
- self-esteem and self concept:
”inhibit[s] performance, diminish[es]
motivation, and depress[es] mood”

Winick, B.J. 1995

Part Two

Rights of People Under Guardianship

What *Can* the guardian do?

Are there limitations?

Powers & Duties: Guardian & Conservator

- Court shall grant “only those powers necessary to provide for the demonstrated needs of ward/protected person” *MN Stat. 524.5-313(b)*
- G/C: “subject to the control and direction of the court at all times and in all things” *MN Stat. 524.5-313(a)*

Statutory Powers & Responsibilities: Guardian

- Place of Abode
- Care, Comfort, Maintenance Needs
- Personal Property
- Medical Care
- Contracts (if no conservator)
- Supervisory Authority
- Governmental benefits (if no conservator)

Place of Abode

The power to have custody and power to establish place of abode within or outside the state

May not be admitted to Regional Treatment Center (RTC) except

- after commitment hearing
- for outpatient services
- to receive temporary care, less than 90 days/calendar year

Care, Comfort, Maintenance Needs

The duty to provide for care, comfort, and maintenance needs including food, clothing, shelter, health care, social & recreational requirements, and, whenever appropriate, training, education, habilitation or rehabilitation

Personal Property

The duty to take reasonable care of clothing, furniture, vehicles, and other personal effects

- Bill of Rights requires consultation and person deciding to extent possible
- Must give notice prior to disposition of any personal effects: *Notice of Intent to Dispose of Personal Property* form

Medical Care

The power to give necessary consent to enable the ward to receive necessary medical or other professional care, counsel, treatment or service

- Exceptions
 - **Need court order:** psychosurgery, ECT, sterilization, experimental treatment
 - **Cannot Consent:** violations of conscientious, religious, moral belief of ward

Contracts

The power to approve or withhold approval of any contract, except necessities, which protected person may make or wish to make

Transaction set-aside: AKA 2 year lookback

Supervisory Authority

The duty and power to exercise supervisory authority over ward in manner which limits civil rights and restricts personal freedom only to extent necessary to provide needed care and service

Governmental Benefits

The power to apply on behalf of protected person for any assistance, services, or benefits available to protected person through any unit of government

Wherever possible and appropriate...[use] governmental programs rather than...person's estate. Failure...shall be grounds for removal

Powers & Responsibilities: Conservator

- Pay reasonable charges
- Pay all lawful debts
- Possess and manage the estate, including real estate
- Sell, mortgage, purchase interest in inherited real estate
- Contracts
- Governmental Benefits

Pay Reasonable Charges

The duty to pay reasonable charges for the support, maintenance, and education in a manner suitable to the protected person's station in life and value of the estate

Pay Debts

The duty to pay all just and lawful debts and reasonable charges incurred for support, maintenance, and education of the protected person's spouse and dependent children

Possess & Manage Estate

The duty to possess and manage the estate, collect all debts and claims in favor of the protected person...invest all funds not currently needed for debts and charges

- Compromise debts, Lawsuits, Represent pp in court proceedings: all require court approval
- Real Estate: cannot be mortgaged, leased, or sold without court approval

Real Estate

Where a protected person has inherited an undivided interest in real estate court,...for best interest of protected person...may authorize exchange or sale of person's interest or a purchase by protected person of any interest other heirs may have in the real estate

Contracts

The power to approve or withhold approval of any contract, except necessities, which protected person may make or wish to make

Transaction set-aside: AKA 2 year lookback

Governmental Benefits

The power to apply on behalf of protected person for any assistance, services, or benefits available to protected person through any unit of government

Wherever possible and appropriate...[use] governmental programs rather than...person's estate. Failure...shall be grounds for removal

RIGHTS OF PERSONS UNDER GUARDIANSHIP / CONSERVATORSHIP

- Uniform Guardianship and Protective Proceedings Act
- MAGiC Standards of Practice
- HCBS Standards: 245D / Person Centered Planning & Service Deliver

RIGHTS OF PERSONS UNDER G/C

Uniform Guardianship and Protective Proceedings Act ***Bill of Rights***

MN Statute 524.5-120

...person retains all rights not restricted by court order and these rights must be enforced by the court...



524.5-120 BILL OF RIGHTS FOR WARDS AND PROTECTED PERSONS.

- (1) treatment with dignity and respect;
- (2) due consideration of stated personal desires, medical treatment preferences, religious beliefs, & other preferences & opinions in decisions made by G/C
- (3) receive timely & appropriate health care & medical treatment that does not violate known conscientious, religious, or moral beliefs
- (4) exercise control of all aspects of life not delegated specifically by court order
- (5) services individually suited to person's conditions and needs;
- (6) petition the court to prevent or initiate a change in abode;
- (7) care, comfort, social and recreational needs, training, education, habilitation, & rehabilitation care & services, within available resources;
- (8) be consulted concerning, and to decide to the extent possible, the reasonable care and disposition of clothing, furniture, vehicles, & other personal effects, to object to disposition & to petition the court for a review of proposed disposition;
- (9) personal privacy;

524.5-120 BILL OF RIGHTS FOR WARDS AND PROTECTED PERSONS.

(10) communication & visitation with persons of person's choice, provided

that if the guardian has found that certain communication or visitation may result in harm to health, safety, or well-being, that communication or visitation may be restricted but only to the extent necessary to prevent the harm;

(11) marry & procreate, unless court approval is required, & to consent or object to sterilization as provided in section 524.5-313

(12) petition the court for termination or modification or for other appropriate relief;

(13) be represented by an attorney in any proceeding or for the purpose of petitioning the court;

(14) vote, unless restricted by the court; and

(15) execute a health care directive, including both health care instructions and the appointment of a

health care agent, if the court has not granted a guardian any of the powers or duties under section 524.5-313, paragraph (c), clause (1), (2), or (4).

RIGHTS OF PERSONS UNDER G/C



- ***Standards of Practice***
www.minnesotaguardianship.org
(Education tab)
- Person Centered Guardianship standards

MAGiC Standards of Practice

II. STANDARDS APPLICABLE TO ALL GUARDIANS/CONSERVATORS

A. Person Centered Guardianship / Conservatorship

MAGiC Standards of Practice

- 1. The individual should be asked what he/she wants in relation to the decision at hand as well as identification of life goals.*** Consider any needed assistance or accommodations the person may need due to cognitive functioning and ability to express themselves.....

MAGiC Standards of Practice

...Even individuals who do not use words to communicate still have opinions and preferences. Behaviors such as smiling, grimacing, pulling away from, or leaning into, touch or other stimuli are all forms of non-verbal communication.

MAGiC Standards of Practice

2. If the individual is unable, even with assistance, to express goals and preferences, input from others familiar with the person should be sought to help determine what the person would want.

MAGiC Standards of Practice

3. The guardian/conservator *shall*:
 - a. *encourage opportunities for the person to exercise rights retained by the person and which the person is capable of exercising;*
 - b. *encourage the person to participate to the maximum extent of the person's abilities in all decisions that affect him or her, to act on his or her own behalf where able to do so, and to develop / regain capacity to the extent possible.*

MAGiC Standards of Practice

3. The guardian/conservator shall:

c. *recognize there is dignity in risk.*

Individuals experience increased life-satisfaction when they are encouraged to make their own decisions. In exercising decision-making authority granted by the court, *the guardian/conservator and the person should engage in a risk/benefit analysis in consideration of the individual's desires.* Decisions [with] low risk of harm should generally be supported.

MAGiC Standards of Practice

...For decisions with higher potential risk outcomes, the guardian / conservator should *engage the care team to assist with risk management and mitigation activities when necessary to address the risk of significant harm.*



- *MN Statute 245D.02 Definitions*
 - Subd. 11b Least restrictive alternative
 - Subd. 29a Self-determination
- *MN Statute 245D.04 Service Recipient Rights*
 - Subd. 3 Protection-Related Rights
- *MN Statute 245D.07 Service Planning and Delivery*
 - Subd. 1a Person Centered Planning and Service Delivery

MN Statute 245D.02

Subd. 11b. **Least restrictive alternative.** means the alternative method for providing supports and services that is the least intrusive and most normalized *given the level of supervision and protection required for the person.* This level of supervision and protection *allows risk taking* to the extent that there is *no reasonable likelihood that serious harm will happen* to the person or others.

MN Statute 245D.02

Subd. 29a. Self-determination.

means the person makes decisions independently, plans for the person's own future, determines how money is spent for the person's supports, and takes responsibility for making these decisions. If a person has a legal representative, the *legal representative's decision-making authority is limited to the scope of authority granted by the court or allowed in the document authorizing ... to act.*

MN Statute 245D.04

Subd. 3. Protection-related rights.

(a) A person's protection-related rights include the right to...

(6) be treated with courtesy and respect and receive respectful treatment of the person's property;

(7) *reasonable observance of cultural and ethnic practice and religion; ...*

Subd. 3. Protection-related rights (cont'd)

- (13) *associate with other persons of the person's choice;*
- (14) *personal privacy, including the right to use the lock on the person's bedroom or unit door;*
- (15) *engage in chosen activities;* and
- (16) *access to the person's personal possessions at any time, including financial resources.*

Subd. 3. Protection-related rights (cont'd)

(b) For a person residing in a residential site ...protection-related rights also include the right to:

- (1) have *daily, private access to and use of a non-coin-operated telephone* for local calls and long-distance calls made collect or paid for by the person;
- (2) *receive and send, without interference, uncensored, unopened mail or electronic correspondence or communication;*

Subd. 3. Protection-related rights (cont'd)

(3) have use of and free access to common areas in the residence and the freedom to come and go from the residence at will;

(4) *choose the person's visitors and time of visits and have privacy for visits* with the person's spouse, next of kin, legal counsel, religious adviser, or others, in accordance with section [363A.09](#) of the Human Rights Act, *including privacy in the person's bedroom*;

Subd. 3. Protection-related rights (cont'd)

(c) Restriction of a person's rights ... *is allowed only if determined necessary to ensure the health, safety, and well-being of the person.* ... The restriction must be implemented in the least restrictive alternative manner necessary *to protect the person and provide support to reduce or eliminate the need for the restriction in the most integrated setting and inclusive manner...*

MN Statute 245D.07

Service Planning and Delivery

Subd. 1a. **Person-centered planning and service delivery.**

(a) ... must *provide services in response to the person's identified needs, interests, preferences, and desired outcomes* as specified in the coordinated service and support plan and ...plan addendum...

(b) Services must be provided in a manner that supports the person's preferences, daily needs, and activities and accomplishment of the person's personal goals and service outcomes, consistent with the principles of:

Subd. 1a. Person-centered planning and service delivery (cont'd)

- (1) person-centered service planning and delivery that:
 - (i) *identifies and supports what is important to the person as well as what is important for the person*, including preferences for when, how, and by whom direct support service is provided;

Subd. 1a. Person-centered planning and service delivery (cont'd)

(ii) uses that information to identify outcomes the person desires; and

(iii) respects each person's history, dignity, and cultural background;

Subd. 1a. Person-centered planning and service delivery (cont'd)

(2) self-determination that supports and provides:

(i) opportunities for the development and exercise of functional and age-appropriate skills, decision making and choice, personal advocacy, and communication; and

(ii) the affirmation and protection of each person's civil and legal rights; and

Subd. 1a. Person-centered planning and service delivery (cont'd)

(3) providing the most integrated setting and inclusive service delivery that supports, promotes, and allows:

(i) inclusion and participation in the person's community as desired by the person in a manner that enables the person to interact with nondisabled persons to the fullest extent possible and supports the person in developing and maintaining a role as a valued community member;

Subd. 1a. Person-centered planning and service delivery (cont'd)

(ii) opportunities for self-sufficiency as well as developing and maintaining social relationships and natural supports; and

Subd. 1a. Person-centered planning and service delivery (cont'd)

(iii) *a balance between risk and opportunity*, meaning the least restrictive supports or interventions necessary are provided in the most integrated settings in the most inclusive manner possible to support the person to engage in activities of the person's own choosing that may otherwise present a risk to the person's health, safety, or rights.

Person Centered Practices

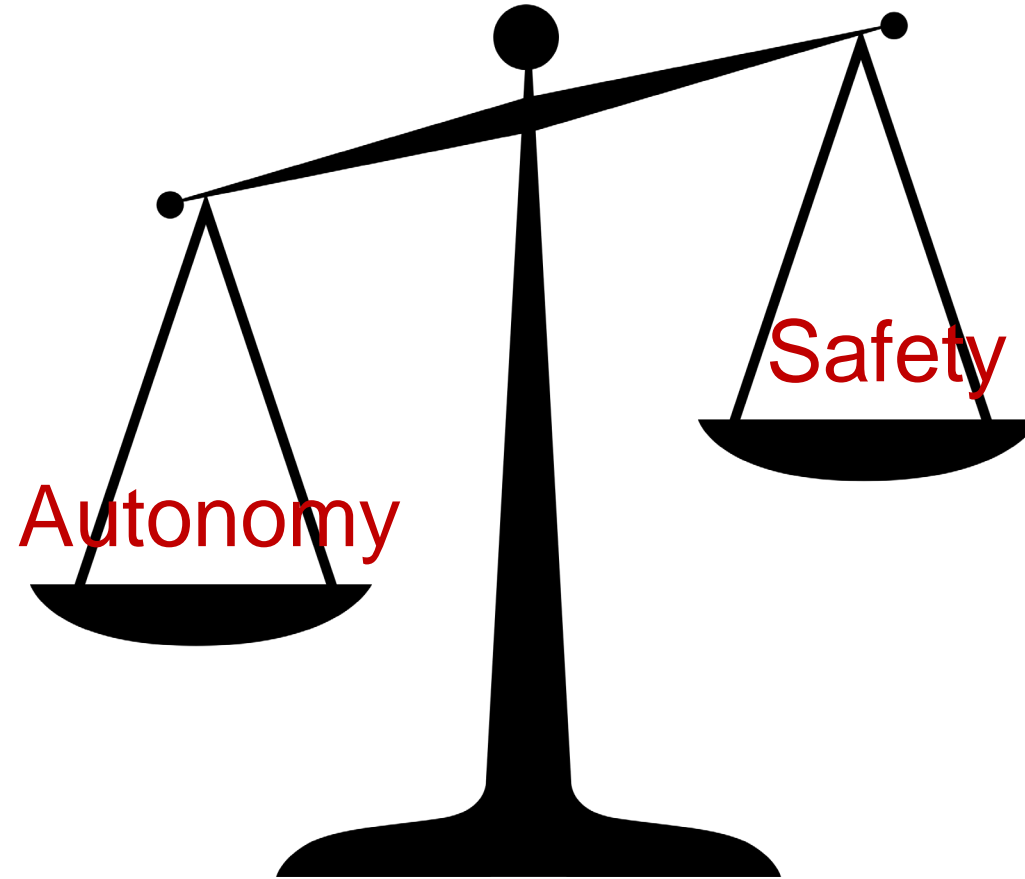
Balancing Dignity of Risk
(Right to Take Risks/Autonomy)

with

Right to Safety



Over-emphasis on ***Safety*** results in poor quality of life, may lead to “behaviors”, resistiveness



Over-emphasis on ***Autonomy*** may result in abandoning vulnerable person to their choices and lack of quality of care

Person Centered Service Provision

Important **TO**
the Person:

- Relationships
- Hobbies
- Residential choices
- How to spend day
- Providers
- Personal expression: clothing, makeup, etc



Important **FOR**
the Person:

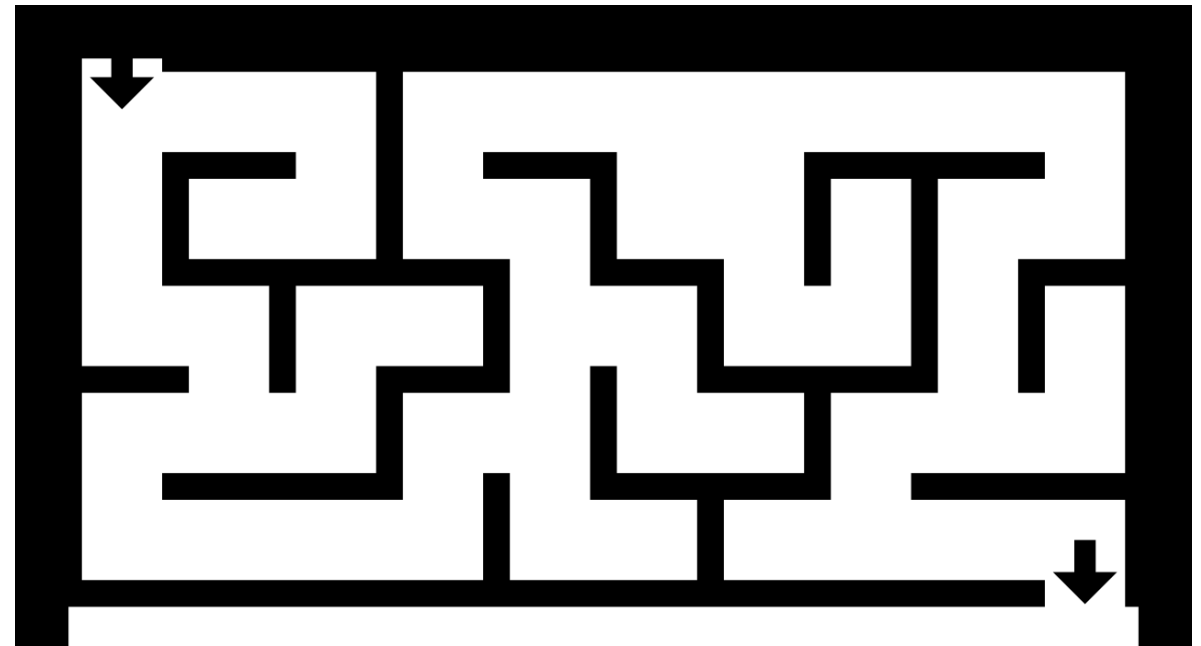
- Health
- Safety
- Policy/law compliance
- Etc.

Part Three

Responding to Problems

Navigating the Challenge

- Open mind & empathy to others' role
- Statutory & best practice requirements
- Risk vs. Harm Analysis
- Communication
- Creativity



Tattoos, Haircuts, Dating, Clothing, Hobbies...and More!

But first....a few words about

Family Guardians

Family Guardian

- Has not received person-centered training
- May be struggling with transitioning / seeing “child” as an adult
- No training on shifting from parent of child to guardian of adult who is still their “child”

Family Guardian

- Has not received p
- May be struggling
adult
- No training on shift
adult who is still th



raining

/ seeing “child” as an

of child to guardian of

Family Guardian

- Has not received



training

- May be adult



ing “child” as an

- No train adult w

to guardian of

Family Guardian

- Has not
- May be adult
- No training for adult who



Navigating Tattoos, Haircuts, Dating, Clothing, Hobbies

Considerations:

- Does it fall under power/duty of guardian?
- Likelihood it will cause serious harm?
- How likely is it that the person will actually be able to carry out the decision?

Navigating Tattoos, Haircuts, Dating, Clothing, Hobbies

Is the need for safety (prevention of likely serious harm)
outweighed by enhancement of:

- quality of life / life satisfaction
- person's sense of autonomy

(which will result in reduced resistiveness)

Navigating Tattoos, Haircuts, Dating, Clothing, Hobbies

- Whose needs are paramount? (who or what is this really about?)
- How will it impact person's desired outcomes and life goals (including ability to continue living in current setting)?
- Is there a creative way to meet both choice and safety?

Problem Resolution: Family Guardian

- MAARC report if abuse, neglect, exploitation
- Communication / informal attempts at problem identification and resolution
- Ombudsman
- Guardian's Attorney

Problem Resolution: Family Guardian

- Mediation
- Guardian Complaint Advocacy
- Court
- Petitioning to terminate or for successor

Independent Guardian

Same as Family Guardian options **Plus:**

- Reminding of MAGiC / NGA Standards of Practice
- Grievance procedure (if organizational guardian)
- Center for Guardianship Certification (if applicable)
- Reminder: implications of being Removed for Cause

Public Guardian

- MAARC report if abuse, neglect, exploitation
- Contact Public Guardianship Office:

844-205-4189

dhs.publicguardianship@state.mn.us

Resources

VOA MN www.voamnwi.org

- Legal Services: HCD forms and more
- CESDM & Protective Services: links to articles, G&C FAQ and more

Rights of People Under Gship

www.voamnwi.org/pdf_files/guardianship-rights

Resources

- Office of Ombudsman for Mental Health and Developmental Disabilities
<https://mn.gov/omhdd/>
- Office of Ombudsman for Long Term Care
www.mnaging.org/Advocate/OLTC.aspx

Resources

- Office of Revisor www.revisor.mn.gov/
- Article 5 of the Uniform Probate Code,
Protection of Persons Under Disability
and Their Property,
MN Statute 524.5-101 – 524.5-903
- Home & Community-Based Services
Standards
www.revisor.mn.gov/statutes/cite/245D

Resources

- Minnesota Association for Guardianship & Conservatorship (MAGiC)
Bill of Rights Wards & Protected Persons
www.minnesotaguardianship.org
- National Guardianship Association Code of Ethics www.guardianship.org
- Center for Guardianship Certification
<https://guardianshipcert.org/>

Resources

- Curriculum, online training to help navigate topic of sexuality (IDD)
www.elevatustraining.com/
- Person Centered Services
<https://mn.gov/dhs/partners-and-providers/program-overviews/long-term-services-and-supports/person-centered-practices/>

Resources

- Winick, B.J. (1995). The side effects of incompetency labeling and the implications for mental health law. *Psychology, Public Policy, and Law* 1(1), 6-42
- Vallerand, R. & O'Conner, B. (1989) Motivation in the Elderly: A theoretical framework and some promising findings. *Canadian Psychology* 30(3): 538-550

Resources

DHS Videos on Supported Decision Making:

www.youtube.com/playlist?list=PLKdIRbjdmxgeDSVBZhEFyrzIli9zjO3Mc

DHS Videos on Ethical Dilemmas:

<https://www.youtube.com/watch?v=WcQaPWlceUu>

DHS Videos on Ethical Dilemmas: Part II

<https://www.youtube.com/watch?v=2LoSVwtBZ4Q>

Working Interdisciplinary Network of Guardianship Stakeholders

www.wingsmn.org

Resources

NEW Private Guardianship and Conservatorship
Training on Court Website-Prior to Petition or During
Guardianship

<http://www.mncourts.gov/Help-Topics/Guardianship-and-Conservatorship.aspx>

- Under Tools & Resources tab

Public Guardianship CBSM Page:

www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=id_000896

Center for Excellence in Supported Decision Making

GUARDIANSHIP INFORMATION LINE



952-945-4174

1-844-333-1748

CESDM@voamn.org

www.facebook.com/cesdmvoamn/



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MINNESOTA

- *Phone Consultation, Advice, I&R*
- *Assessments*
- *Surrogate Decision Maker Support*
- *Facilitation of Supported Decision Making & Surrogate Decision Making*
- *Legal Tools*
- *Petitioning for G/C*

Center for Excellence in Supported Decision Making: Impacting Individuals

Guardianship Complaint
Advocacy:
651-440-9300

MINNESOTA
ELDER JUSTICE
CENTER



CESDM & WINGS MN: Impacting Communities

- Supporting individuals, providers, families through education
- Building systems prioritizing supported decision making and alternatives to guardianship
- Sustaining conversations with stakeholders: improve g'ship outcomes, increase self-determination



Join our efforts to promote alternatives to guardianship and expand networks of people addressing maltreatment of vulnerable adults:

Become a WINGS MN community member!

cesdm@voamn.org

www.wingsmn.org



 **Volunteers of America®**
MINNESOTA AND WISCONSIN
Helping America's most vulnerable™



Thank You

Where to find help now

- Person Centered Thinking 2-day Trainings
 - <http://rtc3.umn.edu/pctp/training/newdates1.asp?training=1>
- Person Centered Practices Webpage
 - <http://mn.gov/dhs/partners-and-providers/continuing-care/provider-information/person-centered-practices/>
- Olmstead Plan Webpage
 - <http://mn.gov/dhs/general-public/featured-programs-initiatives/olmstead-plan/>
- DHS Training Archive page
 - http://www.dhs.state.mn.us/main/dhs16_143138
- Bulletins
 - http://www.dhs.state.mn.us/main/id_000305
- Lead Agency Review Website
 - <http://www.minnesotahcbs.info/>
- E-List Announcements
 - http://www.dhs.state.mn.us/main/id_000677#
- CBSM Main Page
 - http://www.dhs.state.mn.us/main/id_000402
- Disability Hub MN
 - <http://disabilityhubmn.org/>
- Positive Supports Minnesota
 - <https://mnpssp.org/>

Please take a moment to let us know your thoughts.

- Take our [Survey](#):
- <http://http://surveys.dhs.state.mn.us/snapwebhost/s.asp?k=155501970437>

Audio from today's session will be available beginning tomorrow morning by dialing:

855-859-2056

Conference ID:

9777618

If you have questions following the session, email to DSD.ResponseCenter@state.mn.us

Thank you for attending!