



Minnesota Department of **Human Services**



Adult Protective Services in Guardianship

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Presenters



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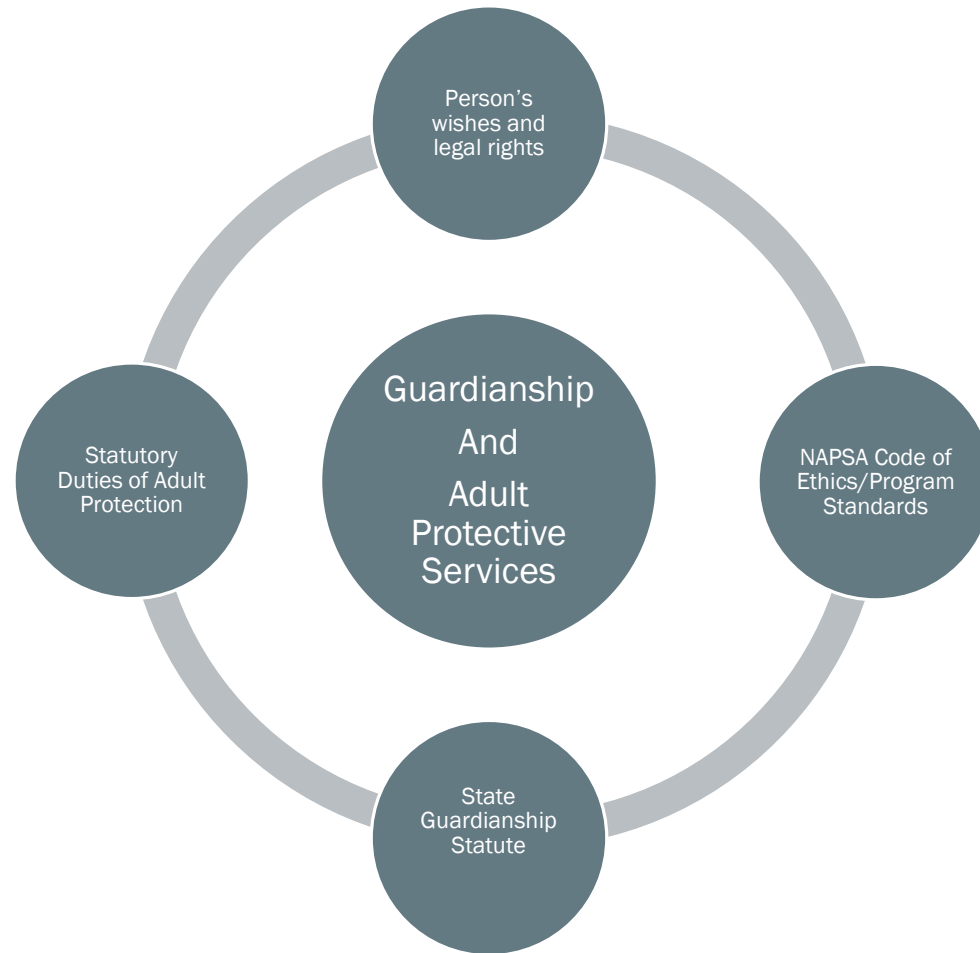
Objectives

- Define alternatives less restrictive than guardianship
- Identify ethical dilemmas for APS's role in guardianship
- Select guardianship goals consistent with APS ethics/role
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Agenda

- Definitions
- Guardianship
- Rights
- Less Restrictive Alternatives
- NAPSA Guidelines
- Ethical Conflicts
- Goal/Outcome Based Guardianship
- NAPSA Technical Assistance
- Case Study
- Resources

Vulnerable Adult



Definitions



Definitions

- **Guardian-** entity who acts under court order/appointment over a person's personal/estate decisions/management
- **Guardianship-** the legal arrangement
- **Incapacity or Incompetence-** legal standard for person's ability to exercise informed decision making
- **Estate-** Assets, real property; what a person owns
- **Fiduciary** – entity with a special obligation for trust and confidence
- **Ward-** person with a guardian



Guardianship



“APS Get a Guardian”

- Impaired capacity/Diagnosis
- No legal surrogate
- Lacks support system
- Refusing services
- Maltreatment or risk of maltreatment
- Concerns of provider liability



Roger- Get a Guardian?

- 53 year old male
- ALS, prognosis 4 months
- Difficulty communication
- Assisted Living
- Wants to be home
- Suicide attempt yesterday
- 72 hour hold, hospital
- APS report; self neglect
- Commitment unless guardianship
- Psychiatrist supports guardian



Guardianship

- Constitutional Due Process Protections
- State Statute- by state
- Court process
- Court Order Appointment provides info on Guardian's authority



Legal Standard for Guardian Appointment

- Varies by State Statute
- Screening
- Notice Requirement
- Evidence Standard Proof
- Priority for Appointment





Powers of a Guardian/Conservator

- Residence/Abode
- Medical Care and Treatment
- Service Consent
- Personal Property Management
- Contracts
- Asset management
- Possess and manage the estate
- Collect all income, debts, claims



Rights





Potential Impacts on Person's Rights

- Freedom of movement
- Freedom of association
- Decision where to live
- Marriage/divorce
- Property ownership
- Vote
- Sign a contract
- Spend money as wish
- Hire an attorney
- File a lawsuit
- Possess a driver's license
- Own or possess firearm
- Funeral and burial arrangements



Rights of People with Guardians

- All Constitutional Rights are not Granted by the Court to the Guardian



Rights of People Under Guardianship - NGA

- The right to have the guardian consider the ward's personal desires, preferences, and opinions (# 5)
- Procreate (#7)
- Marry (#8)
- Speak privately with an attorney, ombudsman or advocate (# 13)
- The right to privacy, which includes the right to privacy of the body, and the right to private, and uncensored communication with others by mail, telephone, or personal visits. (#2)
- The right to petition the court to modify or terminate the guardianship. (#14)



Process for appointment

- Petitioner: Initiates
- Petition: Document filed
- Due Process: Notice to person and Interested Parties defined under statute, Legal Representation, Attend hearing
- Standard: Clear and Convincing Evidence (state dependent)



Vulnerable Adult



Less Restrictive Alternatives



Alternatives

Impaired capacity, but needs are met

- Care Coordination/Case Management
- Family/Caregiver
- Health Care Directive
- Provider Policy
- Ethics Committee
- Authorized Representative
- Protective Order
- Supportive Decision Making Models

Unable to manage finances, but needs are met

- Family/Trusted Person
- Power of Attorney
- Trust
- Representative Payee
- Authorized Representative
- Protective Arrangement



Guardianship Considerations

- What is the goal?
- What is needed to accomplish the goal?
- Less Restrictive Alternatives?
- Will guardianship accomplish the goal?
- What is the role of APS?



Guardianship

Ineffective

- Prevent what “might happen”
- Control behavior
- Resolve family conflict
- Surrogate family
- Case management/APS
- Fill a service gap i.e. mental health tx. or service that meets person’s need

Effective

- Clear Goal
- Goal can be accomplished under the authority of a guardian
- Conflict among multiple legal agents
- Prevent financial exploitation
- Consents for self neglecting VA who refuses necessary care or services



MN §626.557 Subd. 10 : Duties of County

(c). When necessary to protect VA from further harm intervene to help family, VA or interested person to:

- (1) Seek authority to remove perpetrator from VA home
- (2) Appoint of guardian or conservator pursuant (Minnesota law)
- (3) Replacement of guardian or conservator suspected of maltreatment
- (4) Referral of perpetrator for criminal prosecution

Expense of legal interventions must be paid by the county for indigent persons



MN: County Guardianship Screening Committee

The county social service agency may create a screening committee:

- Review petitions involving an indigent person
- Knowledge of less restrictive alternatives
- Court shall make its decision after the screening committee has reviewed the petition
- Court may appoint a guardian under county contract

524.5-304



MN: Guardianship/Conservatorship Expense

If Guardian or Conservator nominated by court or county adult protection:

- Because no friend or relative available to serve
- Necessary to prevent maltreatment under 626.5572
- County fee schedule considered
- County may be reimbursed from person's estate when a county employee serves when county makes diligent effort to find an independent guardian/conservator

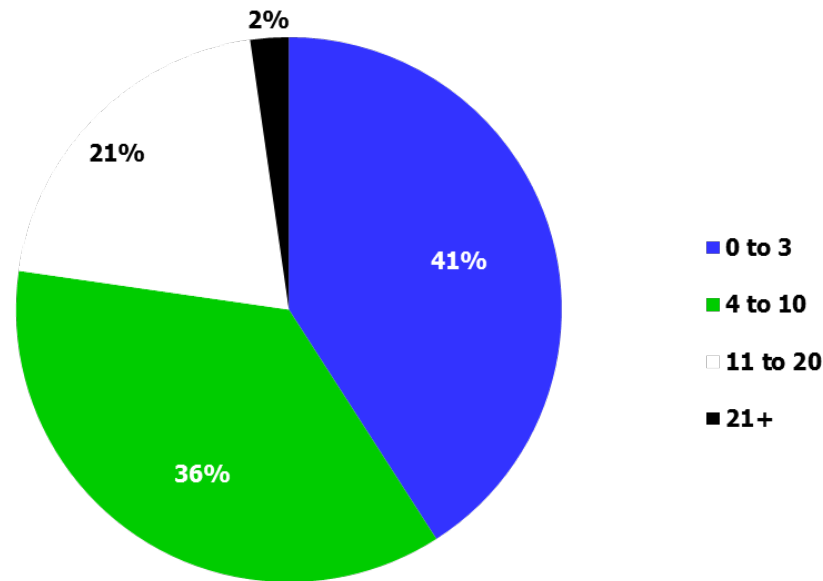
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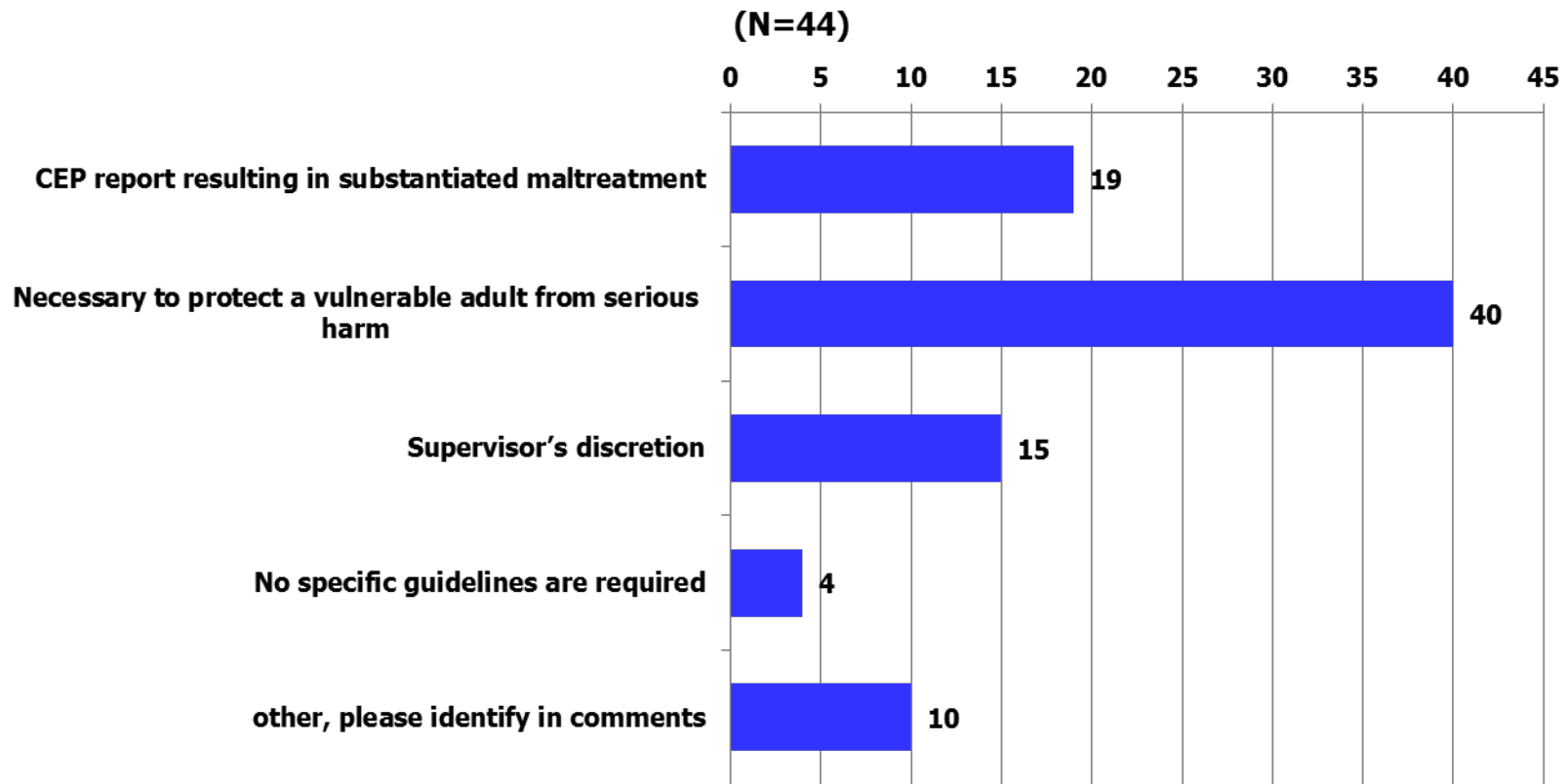
MN County APS Survey: AP Guardianship petitions in county/collaborative?

(N=44)



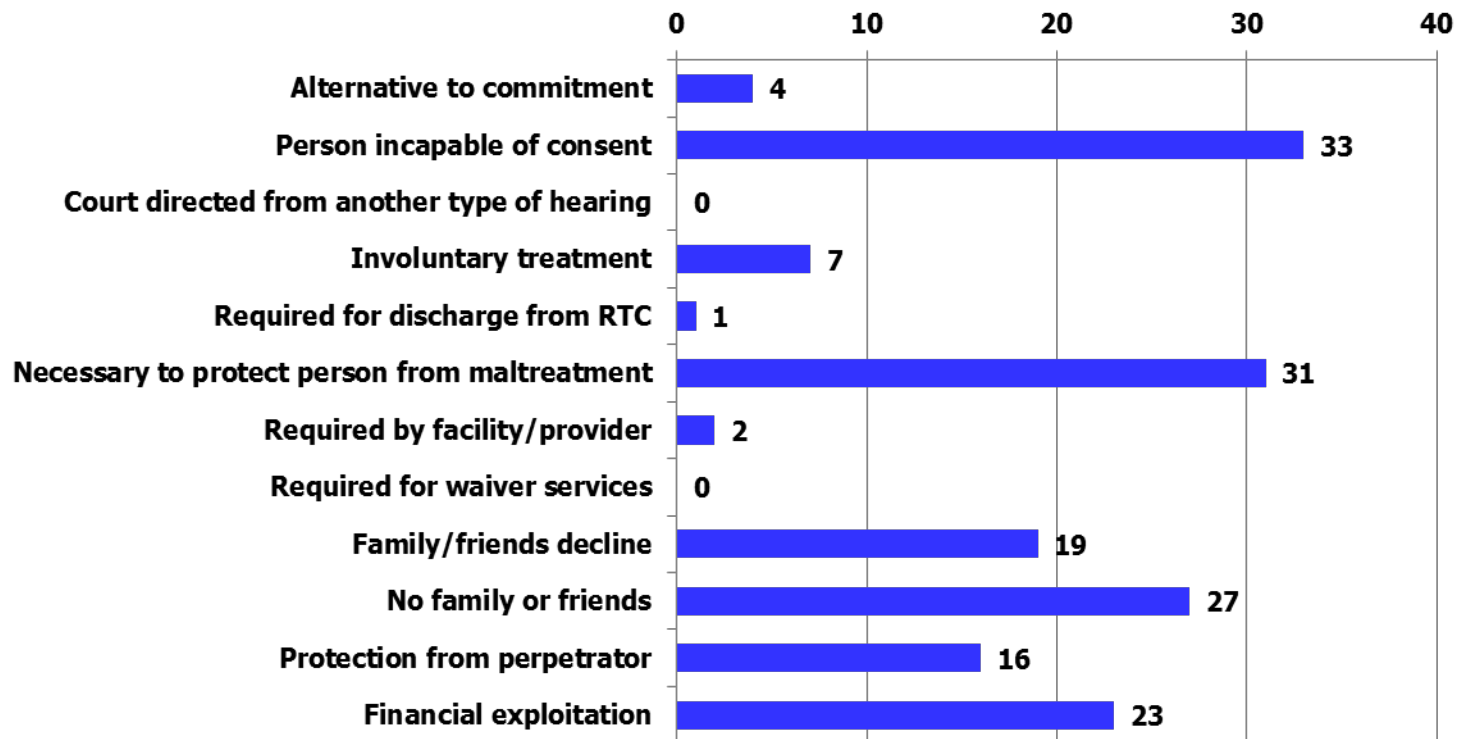


APS Policy Guidelines Used for Petition Decisions?



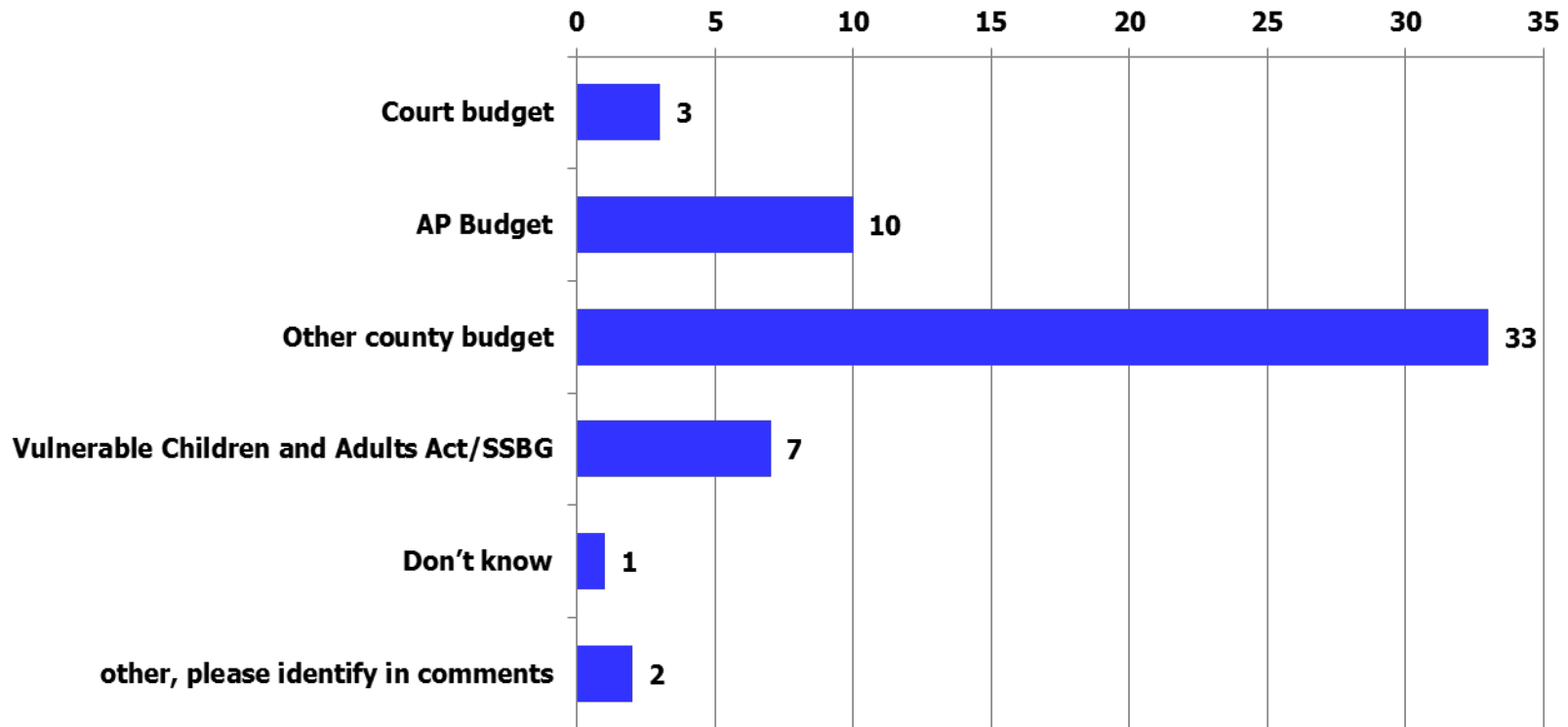
Primary Purpose of AP Guardianship Petitions

Check all that apply. (N=44)



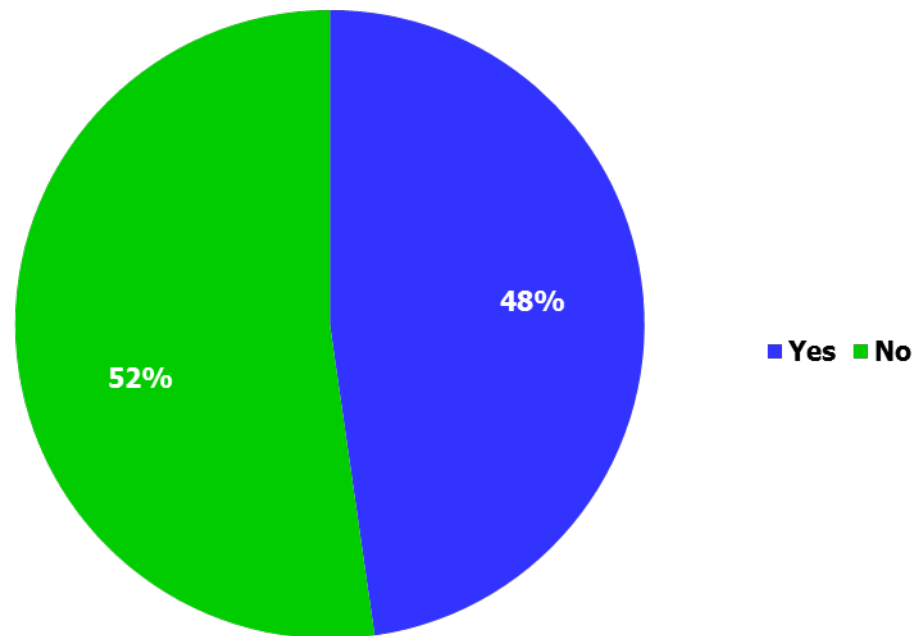
How are fees paid for guardians on AP petitions?

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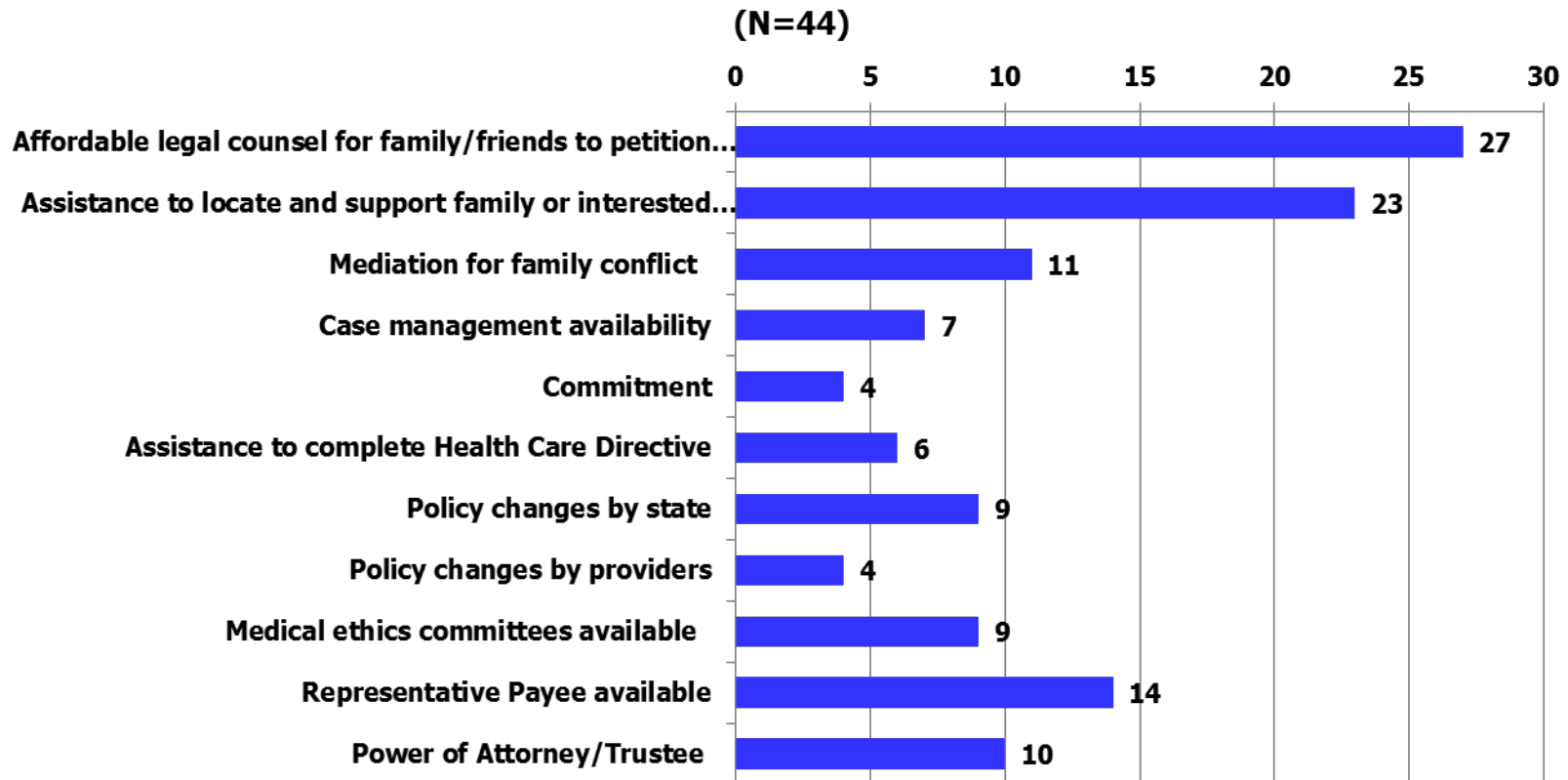


Are standards or outcome used for G/C who serve AP clients?

10. N=44)



Alternatives Which Would Reduce AP Petitions?



NAPSA Guidelines



NAPSA Guiding Principles

- Hold perpetrators, not victims, accountable for the abuse and for stopping their behavior. Avoid victim blaming questions and statements.



NAPSA Code of Ethics

Practice Guidelines

- Focus on case planning that maximizes the vulnerable adult's independence and choice to the extent possible based on the adult's capacity.
- Honor the right of adults to receive information about their choices and options in a form or manner that they can understand.
- In the absence of an adult's expressed wishes, support casework actions that are in the adult's best interest.
- Use substituted judgment in case planning when historical knowledge of the adult's values is available.



NAPSA Ethics, Practice Guidelines

Cont'd

- Use the least restrictive services first whenever possible—community-based services rather than institutionally-based services.
- Use family and informal support systems first as long as this is in the best interest of the adult.
- Do no harm. Inadequate or inappropriate intervention may be worse than no intervention.



Ethical Conflicts



APS Ethical Conflicts

- Autonomy of Person

vs.

- Protection of the Vulnerable



Goal/Outcome Based Guardianship



NAPSA Recommended Minimum Program Standards; Guiding Principles

- Take into consideration victims' concepts of what safety and quality of life mean.



NAPSA Involuntary Service Planning

- In emergencies where there has been a determination of extreme risk and the client lacks capacity or cannot consent to services, involuntary action may be necessary. The decision to take involuntary action is not to be taken lightly.



NAPSA Technical Assistance



APS Oversight of Decisions to Seek Guardianship

- Standards
- Documentation
- Expert Assessment
- Review Process
- Oversight



APS Standards for Petitions

- Is state law clear when APS should seek a guardianship?
 - Need a legal opinion? AG or Legal Counsel
- Is staff aware of policies and procedures?
 - Training and agency meetings, bulletins and memos
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Documentation

- What is the documentation required to support a guardianship recommendation?
- Do workers address all elements of the legal standard in their documentation?
- Is documentation consistent across offices and workers?



Expert Assessment

- Formal medical/mental health assessment required?
 - Who conducts? Qualifications for conducting the assessment? Court experience?
 - Can worker do the assessment? Qualifications?
 - Should they or is an independent assessment preferable?
- Does person conducting the assessment know the legal standard?



Review Process

- Is worker's decision to seek guardianship timely reviewed within the agency
- Is there an independent outside reviewer who determines
 - Legal standard met
 - No lesser intervention appropriate
 - Will file legal papers and appear in court on case
- If case not filed or if guardianship petition is denied, is reason provided and reviewed with worker, APS



Oversight

- How is consistency assured within APS?
- Agency tracking of cases referred to guardianship
- Timely case audits
- Policies and procedures reviewed in light of tracking and audits
- Training of staff updated based on findings



Recommendations for APS Programs

- Develop a structured tool to document cases facts and show why guardianship is the least restrictive and most appropriate intervention
- Review existing tools to see if they accomplish these goals





Structured Tool

- Clear statement of the legal standard and facts indicating that the client meets the legal standard
- Guardianship is the least restrictive alternative that will prevent harm
 - What lesser alternatives have been tried and the outcome
 - Why only guardianship is appropriate
- Documentation of the:
 - Abuse, neglect, and/or exploitation
 - Client's decision-making, self-care, etc.
 - Capacity and how capacity determined



Structured Tool Cont'd

- Nature and extent of client contact with APS
- If and how client qualifies for finding s/he is eligible for APS services
- Nature and extent of harm and how determined



APS Supervision

- Consider if APS supervisor should review and approve all requests for guardianship before application is pursued



Data Collection

- Consider benefits of tracking cases
 - Report cases to state APS Office when decision made in APS to seek guardianship
 - Update if case referred to oversight committee and the outcome; if case referred to counsel and outcome; filed with court and outcome
 - See if policies uniformly followed in all offices
 - Identify systemic problems or weaknesses
 - Support funding requests for legal support, community efforts to identify guardians, and
 - Creation or expansion of PG Office



Internal Practices

- Create or modify policies and procedures on guardianship
- Identify need for new training, especially if changes in policies or practices



Case Study



Back to Roger- Guardian?

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- ALS, prognosis 4 months
- Difficulty communication
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Systemic Approaches to Improving Guardianship Practice

- Review Committees
- Public Guardian Office
- APS-Bar Association Joint Efforts
- WINGS Program led by courts



Review or Oversight Committees

- Multidisciplinary membership
- Review cases where guardianship may be appropriate for unbefriended elders or vulnerable adults
- Increase consistency of situations in which APS seeks guardianship



Examples

- Bio-ethics Committee (Denver)
 - Structured and trained group guides decisions about guardianship. Has been supportive of and collaborated with APS on guardianship decisions
- Colorado Guardianship Alliance
 - Recruits volunteers to serve as guardians for unbefriended and indigent vulnerable adults
- Bar Associations working with APS to recruit volunteer guardians and pro bono attorneys



Examples Cont'd

- SF Probate Court developed materials on how to be a conservator
- Creation of a Public Guardian's Office (CA)
 - Serve as guardian/conservator of last resort



The Arc: Position Statement Guardianship

- Appointment of a guardian.. should be made only to the extent necessary for the legal protection and welfare of the individual and not for the convenience or preferences of the family, the service system, or society



A Quote to Consider

“Guardianship or conservatorship should only be sought if the individual's judgment or decision making is a major threat to the individual's welfare.”

Conservatorship And Guardianship In Minnesota, Minnesota Conference of Chief Judges Pending, 2003; Amended 2009, 2010, 2013



Resources



Resources

- <http://www.napsa-now.org/about-napsa/code-of-ethics/>
- www.guardianship.org
- <http://supporteddecisionmaking.org/>
- www.consumerfinance.gov/blog/managing-someone-elses-money/
- NAPSA LISTSERV Survey
- Montana “Why Guardianship” document
 - When is guardianship appropriate
- Maryland “How Do I Know If Someone Needs a Guardian?”



Resources Cont'd

- Minneapolis (Hennepin County)
 - Protocol including current level of client risk, diagnosis, capacity to participate in decision making process, less restrictive options tried and why not used in current situation, reasons for guardianship, ethical dilemmas, what guardianship will and will not accomplish/resolve
- Fairfax County, VA Guardianship/Conservatorship Process and Pre-Guardianship Panel document
 - APS Philosophy on Guardianships
 - Screening Committee membership
 - Confidentiality Practices
 - How cases are presented to the screening committee
 - APS Case Work-up/Client Background and Supports
 - Client Risk
 - Medical evaluation report



Thank you!

