



# ***GUARDIANSHIP: Is It Necessary for Positive Outcomes?***

28th Annual NAPSA Conference  
August 30, 2017  
Anita L. Raymond, LISW, CMC



# *Objectives*

1. Understand statutory and practical aspects:  
when Guardianship may be an effective option
2. Understand when and why Guardianship may  
not be the best option
3. Describe types of alternative decision-makers  
for those who lack decisional capacity

# *The Paradox of Guardianship*

Valuable tool to  
protect Vulnerable  
Adult?

*Or*

Heavy-handed tool  
which strips  
constitutional right to  
self-determination?



# *Is Guardianship the Best Solution?*

- An ethical issue: removing constitutional right to self-determination / autonomy
- Time Consuming: due process protections to ensure justifiable intrusion by government in lives of citizens
- Expensive: to incapacitated person, family, society


# *Is Guardianship/Conservatorship the Best Solution? (cont'd)*

- Potentially emotionally devastating to person and family
- May not even solve identified problem
- The problem of scarce resources
- Potential loss: dignity of risk



*To deny the right to  
make choices in an  
effort to protect the  
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*People under guardianship can experience a **significant negative impact** on their physical and mental health, longevity, ability to function, and reports of subjective well-being.*

~Jennifer Wright, International Journal of Law and Psychiatry



# *Guardianship Can Make Things Worse?*

- Risk of “mission creep”
- Safety vs. Risk
- Research: guardianship & maltreatment
- Loss of power =
  - increased resistance
  - reduced cooperation
  - Decreased sense of self-worth



# *Deciding to Seek Guardianship*

- ✓ An Ethical Decision
- ✓ A Practical Decision
- A Legal Decision



# *Criteria for Legal Intervention: Guardianship (MN)*

- When a person is incapacitated: lacks sufficient understanding/capacity to make or communicate responsible personal decisions, even with use of appropriate technological assistance *and*
- Has behavioral deficits which evidence inability to meet personal needs for medical care, nutrition, clothing, shelter, safety *and*
- No less restrictive alternatives will meet their needs

*(AND Guardianship appointment will actually address the identified problem)*

# *Legal Intervention: Conservatorship (MN)*

- Person is unable to manage property & business affairs b/c of inability to receive and evaluate information or make decisions, even with use of appropriate technological assistance;
- Has property which will be wasted or dissipated unless management is provided *or*
- Money is needed for support, care, education, health, and welfare of the person or individuals entitled to the person's support *and*
- Needs cannot be met by less restrictive alternatives



# *Competence vs. Capacity*

- **Competency:** Determined by a court (e.g., incompetent to stand trial in criminal matters); typically = *global* determination of functioning
- **Capacity:** Ability to make particular decision
  - *Legal* Determination: Guardianship, HCD effective status
  - *Functional, Medical* Determination: everything else

# *Individuals have a right to:*

- Be in denial (at least for awhile)
- Make poor decisions (as long as these don't harm others and understand the risk)
- Choose to do nothing
- Place self at risk (if understand the risk)
- Own unique values, lifestyle and beliefs
- Change one's mind

*Presumption is Capacity*



# *Capacity Challenges:*

- Impaired memory
- Diagnosis relating to cognitive incapacity
- Meeting criteria/definition of Vulnerable Adult
- SW, Nursing, Speech or OT evaluation
- Cognitive testing/screening scores
- Psychiatrist/Psychologist/Physician determination of incompetence/incapacity (Exception: HCD)

None of these *alone* preclude an individual's *legal* ability to make a decision.  
(your state law may be different)

# *An Individual's Capacity May Vary:*

- Throughout a time period (course of illness, hospitalization, time of day, etc.)
- May deteriorate or improve (the healing nature of time)
- Capacity is not global: Depends on decision or issue

*Q: Who decides?*

*A: Who needs the decision?*

# *Determining Incapacity/Inability*

- Medical Diagnosis
- Testing
- Behaviors demonstrate understanding/lack of understanding
- Informed Consent ability



# *Medical Decisional Capacity Requirements*

- **Understanding:** *Ability to comprehend diagnostic/treatment related info. including risks, benefits of proposed treatments*
- **Reasoning:** *Ability to rationally evaluate & compare treatment alternatives*
- **Appreciation:** *Ability to relate diagnostic/treatment info. and related consequences to own situation*
- **Expressing a Choice:** *Ability to convey relatively consistent treatment choices*

(Applebaum & Roth, 1982; Lezak, 1982; Moye & Marson, 2007)

# *Financial Decisional Capacity Requirements*

- Declarative Knowledge
  - *Ability to describe facts, concepts, events related to financial activities*
- Procedural Knowledge
  - *Ability to carry out motor-based financial skills: e.g., making change, writing check*
- Judgement
  - *Ability to make financial decisions consistent with self-interest*

(Moye & Marson, 2007)



# *Functional Capacity Assessment*

## *Tool: Informed Consent*

### **Ability to:**

- Understand the issue: give & receive information
- Understand available options
- Understand risks and benefits of options
- Make a decision
- Decision not based on delusion
- Decision not coerced



Just because a person cannot make decisions *independently*, does that mean person is incapacitated? And in need of legal decision maker??

# *Guardianship Assessment: A PRACTICAL approach*

**P**resume

**R**eason

**A**sk

**C**ommunity

**T**eam

**I**dentify

**C**hallenges

**A**ppoint

**L**imit

# *PRACTICAL Tool*

- Presume guardianship is not needed
- Reason: clearly identify reason for concern
- Ask if triggering concern may due to temporary or treatable condition
- Community: can concerns be addressed by connecting to community resources/making accommodations for deficits?

# *PRACTICAL (cont'd)*

- Team: does person have team to help make decisions/can he/she do develop team?
- Identify abilities, areas of strengths, limitations in decision making if no team
- Challenges: screen/address challenges presented by identified supporters

# *ABA: PRACTICAL (cont'd)*

- Appoint legal surrogate consistent w/ values/preferences
- Limit guardianship powers if guardianship necessary



# *Less Restrictive Alternatives / Addressing Vulnerabilities*

- Person's Own Plan, Cooperation with Others' Plans
- Supported Decision Making
- Family Involvement
- Health Care Directive
- Ethics Committees
- Authorized Rep for Economic Assistance
- County/Private Case Management
- Fiduciary to Manage Income/Assets
- Limited Guardianship



# *SW Advocacy for Person's Own Plan*

- Confront your own risk tolerance
- Build trust / joining
- Advocate for decisions person can make
- Accommodate for disabilities
- Give information about rights
- Help patient identify needs
- Facilitate realistic goal setting (Insight Proxy)
- Identify and link to formal and informal resources
- May need to confront other professionals



# *Supported Decision Making*

A philosophical approach (used within guardianship structure)

A legal tool in Texas, Delaware; British Columbia, Australia, other jurisdictions

Another less restrictive alternative



# *Supported Decision Making: An Emerging Model*

- “A way people can make own decisions, stay in charge of their lives while receiving help they need to do so.”
- Person making decisions *with* support of others vs. others making decisions *for* the person: “...cutting through the jargon to understand what’s going on and what you need to do...”

~ Jonathan Martinis, Esq.

# *Supported Decision Making: What is This??*

“[J]ust a fancy way of describing how we all make choices. We all need help making decisions, every single day.”

~ Jonathan Martinis

*“I don’t need a guardian. I just need a little help!”*

~ Jenny Hatch



# *Family Involvement & Negotiated Consent*

- Participation of client ideal, not required (if client incapacitated)
- Wide consultation: interested parties
- Decision-making process is documented as well as outcomes and dissent
- Families may need coaching/support



# *HCD (MN)*

- Health Care Directive (*principal appoints agent*)
- Capacity to establish vs. capacity to make medical decision
- Nomination for guardian
- Placement decisions

*Goal: every client?*

# *Ethics Committee / Policy*

- May be capacitated, incapacitated or questionably capacitated patient
- Convenes when there is Ethical Conflict
  - e.g. autonomy vs. protection; benefit vs. harm
- Not decisional body, but does facilitate decision-making
- AMA Policy E-2.20 & E-8.081: recommends using when no surrogate, to facilitate sound decision making, when question re: surrogate acting in best interest



# *Authorized Rep for Economic Assistance*

- Do not need “legal” decision making authority to assist w/ MA application
- Counties/facilities cannot mandate guardianship as condition of admission/service provision (MN)
- X sufficient for signature

# *County/Private Case or Care Management*

- Relationship with patient (see: SW Advocacy)
- Gatekeeper to resources
- Teaching/coaching role with family

# *Banking Tools*

- Auto Pay / Direct Deposit
- Authorized or co-signers (*caution!*)
- On-line monitoring of accounts by trusted other

# *Fiduciaries*

- Representative Payees
- Power of Attorney
- Trust
- Guardian of the Estate

*Never under-estimate the power of controlling the purse-strings!*

# *Representative Payee*

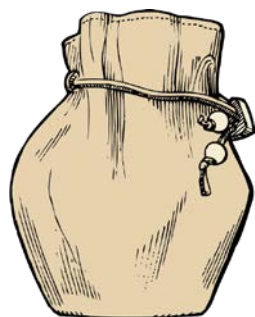
- Voluntary or involuntary
- Excellent tool when governmental benefit is only income/asset (SSA, VA, RR)





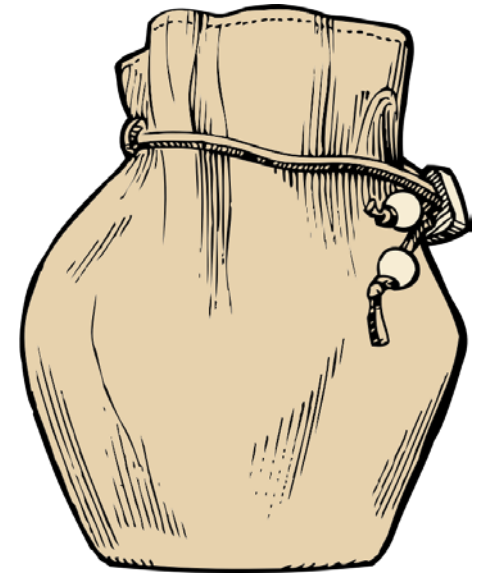
# POA

- Power Of Attorney (*principal* appoints *attorney-in-fact/AIF*)
- Even if check “all powers”, \$\$\$ only
- Nomination for Conservator (MN)
- Role of attorney



# *Other Fiduciaries*

- Trust
- Guardian of the Estate



# *Success of LRA*

- Individual cooperates / doesn't sabotage
- Available family/friend/professional to serve
- Abuse or neglect by surrogate not at issue
- When professionals' liability is low
- Skill & willingness of professionals to respect & work with conflict or difficult clients/families as well as tolerance for some ambiguity



# *Limited Guardianship as LRA*

- Estate powers only
- Limit powers
- Limit duration



# *When Might a G/C Be Needed?*

- Individual lacks capacity to give informed consent *and* no less restrictive alternative
- Decision requires “legal decision-maker” by statute or professional practice
- Irresolvable conflict or controversy about decision
- Required by policy – no other options
- Person unable to receive necessary services without surrogate

# *Avoid Using G/C*

- when person is incapacitated, but all needs being met, or could be met, with supportive services/approaches
- to manage problem behaviors
- for ease of providers/system (including fears of liability)
- to manage chemical dependency
- to obtain treatment for mental illness
- to manage eccentric behaviors
- appointment of G/C would not address issues



# *When Might a G/C Be Needed?*

- Individual lacks capacity to give informed consent/make a decision *and* no less restrictive way to meet needs AND:
- Decision requires “legal decision-maker” by statute or professional practice OR
- Irresolvable conflict or controversy about decision OR
- Required by policy – no other options OR
- Person unable to receive necessary services without guardianship



NATIONAL ADULT PROTECTIVE  
SERVICES ASSOCIATION

***[www.napsa-now.org/about-napsa/code-of-ethics](http://www.napsa-now.org/about-napsa/code-of-ethics)***

## ***NAPSA (or APS) Code of Ethics***

Adult Protective Services...promote safety, independence, & quality-of-life for older persons & persons w/ disabilities...being mistreated or in danger of being mistreated, and who are unable to protect themselves.

***Guiding Value: Every [APS] action...must balance duty to protect the safety of the VA with the adult's right to self-determination.***



NATIONAL ADULT PROTECTIVE  
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## ***Principles***

- Adults have the right to be safe...
- Adults retain all their civil and constitutional rights...unless a court adjudicates otherwise.
- Adults have the right to make decisions that do not conform with societal norms as long as these decisions do not harm others.
- Adults have the right to accept or refuse services.



NATIONAL ADULT PROTECTIVE  
SERVICES ASSOCIATION

## ***Practice Guidelines: APS Responsibilities***

- Recognize: ***interests of the adult are first concern of any intervention.***
- Avoid imposing personal values on others.
- Recognize ***individual differences*** such as cultural, historical and personal values.
- Honor right of adults to ***receive information about choices & options in form or manner that they can understand...***



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## ***Practice Guidelines: APS Responsibilities***

- Focus on case planning that ***maximizes the vulnerable adult's independence and choice*** to the extent possible based on the adult's capacity.
- Use the ***least restrictive services*** first whenever possible—community-based services rather than institutionally-based services.





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## ***Practice Guidelines: APS Responsibilities***

- Use ***family and informal support systems first*** as long as this is in the best interest of the adult...
- In the absence of an adult's expressed wishes, support casework actions that are in the adult's best interest.



NATIONAL ADULT PROTECTIVE  
SERVICES ASSOCIATION

## ***Practice Guidelines: APS Responsibilities***

- Use substituted judgement in case planning when historical knowledge of VA's values is available
- Do no harm. Inadequate or ***inappropriate intervention may be worse than no intervention.***



## *Position Statement on SDM*

The effectiveness of SDM as a widespread, viable alternative to guardianship is promising but it is still subject to much debate and research; however, the concepts behind it and the motivation to provide for a guardianship system and surrogate decision-making paradigms that ***move our society away from paternal protection of persons with cognitive disabilities to assistance for, and in partnership with, persons with cognitive disabilities*** are consistent with the direction of guardianship reform. The need to provide assistance when needed, prevent abuse and undue influence, and respect individual rights is recognized and generally accepted by all stakeholders.



## *Position Statement on SDM*

...Guardianship should be utilized only when lesser restrictive supports are not available. ***Alternatives to guardianship, including supported decision making, should always be identified and considered*** whenever possible prior to the commencement of guardianship proceedings....

## *Joint Position Statement*

### **Autonomy, Decision-Making Supports, and Guardianship**

*All individuals with intellectual and/or developmental disabilities (I/DD) have the right to recognition as persons before the law and to enjoy legal capacity on an equal basis with individuals who do not have disabilities in all aspects of life* (United Nations Convention on the Rights of Persons with Disabilities (UN CRPD), 2006).

## *Joint Position Statement*

The personal autonomy, liberty, freedom, and dignity of each individual with I/DD must be respected and supported. Legally, each individual adult or emancipated minor is ***presumed competent to make decisions for himself or herself, and each individual with I/DD should receive the preparation, opportunities, and decision-making supports to develop as a decision-maker over the course of his or her lifetime.***

## *Joint Position Statement*

Current trends presume the decision-making capacity of individuals with I/DD and the preservation of legal capacity as a priority for all people needing assistance with decision-making.

Like their peers without disabilities, individuals with I/DD ***must be presumed competent; they must also be assisted to develop as decision-makers through education, supports, and life experience.***

# *Joint Position Statement*

***Communication challenges should not be misinterpreted as lack of competency to make decisions.***

Individuals with I/DD should have access to supports and experiences to ***learn decision-making skills from an early age and throughout their lifetimes in educational and adult life service systems.***



## *Joint Position Statement*

...

Where judges and lawyers lack knowledge about people with I/DD and their human rights, ***poor advocacy and tragic legal outcomes often result.***

***Financial incentives*** frequently benefit professionals and guardianship corporations, often to the ***detriment of individuals with I/DD and their families.***

## *Joint Position Statement*

...

Some ... privacy measures have made it more difficult for those assisting other individuals to have access to their records, make decisions, or both. Thus, ***to obtain ...medical care, services, and supports, an individual ...may be ...subjected to guardianship. This result conflicts with the legal presumption of competence and ... principles of autonomy, decision-making supports... and the use of less restrictive alternatives.***

## *Joint Position Statement*

The appointment of a guardian is a serious matter for three reasons:

- (1) It limits an individual's ...agency over how to live and from whom to receive supports to carry out that choice;
- (2) It transfers the individual's rights of autonomy to ... a guardian; and
- (3) ***Many individuals with I/DD experience guardianship as stigmatizing and inconsistent with their exercise of adult roles and responsibilities.***

# *Resources*

***National Resource Center on Supported Decision Making*** [www.supporteddecisionmaking.org](http://www.supporteddecisionmaking.org)

***MN DHS Videos on Supported Decision Making:***  
[www.youtube.com/playlist?list=PLKdIRbjdmxgeDSVBZhEFyrzIli9zjO3Mc](http://www.youtube.com/playlist?list=PLKdIRbjdmxgeDSVBZhEFyrzIli9zjO3Mc)

***American Bar Association:  
The PRACTICAL TOOL***

[www.americanbar.org/groups/law\\_aging/resources/guardianship\\_law\\_practice/practical\\_tool.html](http://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice/practical_tool.html)

# *Resources*

## ***IADD & Arc Position Statement on Supported Decision Making***

[www.aaid.org/news-policy/policy/position-statements/autonomy-decision-making-supports-and-guardianship#.WQpluu8m670](http://www.aaid.org/news-policy/policy/position-statements/autonomy-decision-making-supports-and-guardianship#.WQpluu8m670)

## ***National Guardianship Association Position Statement on Supported Decision Making***

[www.guardianship.org/documents/NGA\\_Policy\\_Statement\\_052016.pdf](http://www.guardianship.org/documents/NGA_Policy_Statement_052016.pdf)

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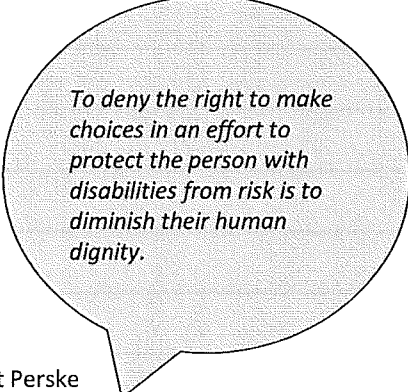
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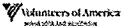
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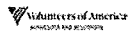
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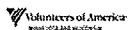
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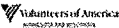
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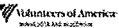
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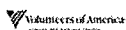
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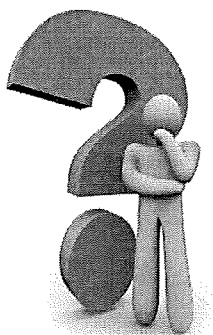
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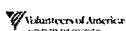
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*Guardianship Assessment:  
A PRACTICAL approach*

Presume  
Reason  
Ask  
Community  
Team  
Identify  
Challenges  
Appoint  
Limit

American Bar Association

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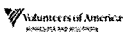
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*PRACTICAL Tool*

- Presume guardianship is not needed
- Reason: clearly identify reason for concern
- Ask if triggering concern may due to temporary or treatable condition
- Community: can concerns be addressed by connecting to community resources/making accommodations for deficits?

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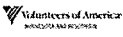
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*PRACTICAL (cont'd)*

- Team: does person have team to help make decisions/can he/she do develop team?
- Identify abilities, areas of strengths, limitations in decision making if no team
- Challenges: screen/address challenges presented by identified supporters

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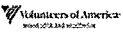
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*ABA: PRACTICAL (cont'd)*

- Appoint legal surrogate consistent w/ values/preferences
- Limit guardianship powers if guardianship necessary

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*Less Restrictive Alternatives /  
Addressing Vulnerabilities*

- Person's Own Plan, Cooperation with Others' Plans
- Supported Decision Making
- Family Involvement
- Health Care Directive
- Ethics Committees
- Authorized Rep for Economic Assistance
- County/Private Case Management
- Fiduciary to Manage Income/Assets
- Limited Guardianship

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*SW Advocacy for Person's Own Plan*

- Confront your own risk tolerance
- Build trust / joining
- Advocate for decisions person can make
- Accommodate for disabilities
- Give information about rights
- Help patient identify needs
- Facilitate realistic goal setting (Insight Proxy)
- Identify and link to formal and informal resources
- May need to confront other professionals

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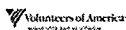
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*Supported Decision Making*

A philosophical approach (used within guardianship structure)

A legal tool in Texas, Delaware; British Columbia, Australia, other jurisdictions

Another less restrictive alternative




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*Supported Decision Making:  
An Emerging Model*

- "A way people can make own decisions, stay in charge of their lives while receiving help they need to do so."
- Person making decisions *with* support of others vs. others making decisions *for* the person: "...cutting through the jargon to understand what's going on and what you need to do..."

~ Jonathan Martinis, Esq.

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*Supported Decision Making:  
What is This??*

"[J]ust a fancy way of describing how we all make choices. We all need help making decisions, every single day."

~ Jonathan Martinis

*"I don't need a guardian. I just need a little help!"*

~ Jenny Hatch

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*Family Involvement &  
Negotiated Consent*

- Participation of client ideal, not required (if client incapacitated)
- Wide consultation: interested parties
- Decision-making process is documented as well as outcomes and dissent
- Families may need coaching/support

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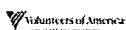
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### HCD (MN)

- Health Care Directive (*principal* appoints *agent*)
- Capacity to establish vs. capacity to make medical decision
- Nomination for guardian
- Placement decisions

Goal: every client?




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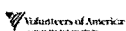
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### Ethics Committee / Policy

- May be capacitated, incapacitated or questionably capacitated patient
- Convenes when there is Ethical Conflict
  - e.g. autonomy vs. protection; benefit vs. harm
- Not decisional body, but does facilitate decision-making
- AMA Policy E-2.20 & E-8.081: recommends using when no surrogate, to facilitate sound decision making, when question re: surrogate acting in best interest




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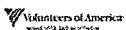
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### Authorized Rep for Economic Assistance

- Do not need "legal" decision making authority to assist w/ MA application
- Counties/facilities cannot mandate guardianship as condition of admission/service provision (MN)
- X sufficient for signature




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*County/Private Case or Care Management*

- Relationship with patient (see: SW Advocacy)
- Gatekeeper to resources
- Teaching/coaching role with family

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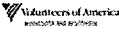
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*Banking Tools*

- Auto Pay / Direct Deposit
- Authorized or co-signers (*caution!*)
- On-line monitoring of accounts by trusted other

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*Fiduciaries*

- Representative Payees
- Power of Attorney
- Trust
- Guardian of the Estate

*Never under-estimate the power of controlling the purse-strings!*

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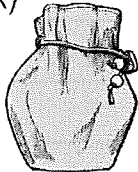
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### Representative Payee

- Voluntary or involuntary
- Excellent tool when governmental benefit is only income/asset (SSA, VA, RR)



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PROVIDING HOPE AND RESPECT

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### POA

- Power Of Attorney (*principal* appoints *attorney-in-fact/AIF*)
- Even if check "all powers", \$\$\$ only
- Nomination for Conservator (MN)
- Role of attorney



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### Other Fiduciaries

- Trust
- Guardian of the Estate



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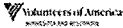
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*Success of LRA*

- Individual cooperates / doesn't sabotage
- Available family/friend/professional to serve
- Abuse or neglect by surrogate not at issue
- When professionals' liability is low
- Skill & willingness of professionals to respect & work with conflict or difficult clients/families as well as tolerance for some ambiguity



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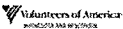
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*Limited Guardianship as LRA*

- Estate powers only
- Limit powers
- Limit duration



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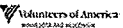
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***When Might a G/C Be Needed?***

- Individual lacks capacity to give informed consent *and* no less restrictive alternative
- Decision requires "legal decision-maker" by statute or professional practice
- Irresolvable conflict or controversy about decision
- Required by policy – no other options
- Person unable to receive necessary services without surrogate



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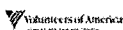
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*Avoid Using G/C*

- when person is incapacitated, but all needs being met, or could be met, with supportive services/approaches
- to manage problem behaviors
- for ease of providers/system (including fears of liability)
- to manage chemical dependency
- to obtain treatment for mental illness
- to manage eccentric behaviors
- appointment of G/C would not address issues




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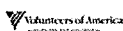
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*When Might a G/C Be Needed?*

- Individual lacks capacity to give informed consent/make a decision *and* no less restrictive way to meet needs AND:
- Decision requires "legal decision-maker" by statute or professional practice OR
- Irresolvable conflict or controversy about decision OR
- Required by policy – no other options OR
- Person unable to receive necessary services without guardianship




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[www.napsa-now.org/about-napsa/code-of-ethics](http://www.napsa-now.org/about-napsa/code-of-ethics)

**NAPSA (or APS) Code of Ethics**

Adult Protective Services...promote safety, independence, & quality-of-life for older persons & persons w/ disabilities...being mistreated or in danger of being mistreated, and who are unable to protect themselves.

**Guiding Value: Every [APS] action...must balance duty to protect the safety of the VA with the adult's right to self-determination.**

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**Principles**

- Adults have the right to be safe...
- Adults retain all their civil and constitutional rights...unless a court adjudicates otherwise.
- Adults have the right to make decisions that do not conform with societal norms as long as these decisions do not harm others.
- Adults have the right to accept or refuse services.

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**Practice Guidelines: APS Responsibilities**

- Recognize: **interests of the adult are first concern of any intervention.**
- Avoid imposing personal values on others.
- Recognize **individual differences** such as cultural, historical and personal values.
- Honor right of adults to **receive information about choices & options in form or manner that they can understand...**

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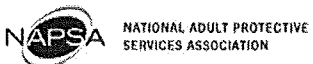
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**Practice Guidelines: APS Responsibilities**

- Focus on case planning that **maximizes the vulnerable adult's independence and choice** to the extent possible based on the adult's capacity.
- Use the **least restrictive services** first whenever possible—community-based services rather than institutionally-based services.

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**Practice Guidelines: APS Responsibilities**

- Use **family and informal support systems first** as long as this is in the best interest of the adult...
- In the absence of an adult's expressed wishes, support casework actions that are in the adult's best interest.

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**Practice Guidelines: APS Responsibilities**

- Use substituted judgement in case planning when historical knowledge of VA's values is available
- Do no harm. Inadequate or **inappropriate intervention may be worse than no intervention.**

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**Position Statement on SDM**

The effectiveness of SDM as a widespread, viable alternative to guardianship is promising but it is still subject to much debate and research; however, the concepts behind it and the motivation to provide for a guardianship system and surrogate decision-making paradigms that **move our society away from paternal protection of persons with cognitive disabilities to assistance for, and in partnership with, persons with cognitive disabilities** are consistent with the direction of guardianship reform. The need to provide assistance when needed, prevent abuse and undue influence, and respect individual rights is recognized and generally accepted by all stakeholders.

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**Position Statement on SDM**

... Guardianship should be utilized only when lesser restrictive supports are not available. **Alternatives to guardianship, including supported decision making, should always be identified and considered** whenever possible prior to the commencement of guardianship proceedings....

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**Joint Position Statement**

**Autonomy, Decision-Making Supports, and Guardianship**  
**All individuals with intellectual and/or developmental disabilities (I/DD) have the right to recognition as persons before the law and to enjoy legal capacity on an equal basis with individuals who do not have disabilities in all aspects of life** (United Nations Convention on the Rights of Persons with Disabilities (UN CRPD), 2006).

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**Joint Position Statement**

The personal autonomy, liberty, freedom, and dignity of each individual with I/DD must be respected and supported. Legally, each individual adult or emancipated minor is **presumed competent to make decisions for himself or herself, and each individual with I/DD should receive the preparation, opportunities, and decision-making supports to develop as a decision-maker over the course of his or her lifetime.**

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**Joint Position Statement**

Current trends presume the decision-making capacity of individuals with I/DD and the preservation of legal capacity as a priority for all people needing assistance with decision-making.

Like their peers without disabilities, individuals with I/DD **must be presumed competent; they must also be assisted to develop as decision-makers through education, supports, and life experience.**

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**Joint Position Statement**

**Communication challenges should not be misinterpreted as lack of competency** to make decisions.

Individuals with I/DD should have access to supports and experiences to **learn decision-making skills from an early age and throughout their lifetimes in educational and adult life service systems.**

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**Joint Position Statement**

...  
Where judges and lawyers lack knowledge about people with I/DD and their human rights, **poor advocacy and tragic legal outcomes often result.**

**Financial incentives** frequently benefit professionals and guardianship corporations, often to the **detriment of individuals with I/DD and their families.**

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**Joint Position Statement**

...

Some ... privacy measures have made it more difficult for those assisting other individuals to have access to their records, make decisions, or both. Thus, **to obtain ...medical care, services, and supports, an individual ...may be ...subjected to guardianship. This result conflicts with the legal presumption of competence and ... principles of autonomy, decision-making supports... and the use of less restrictive alternatives.**

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**Joint Position Statement**

The appointment of a guardian is a serious matter for three reasons:

- (1) It limits an individual's ... agency over how to live and from whom to receive supports to carry out that choice;
- (2) It transfers the individual's rights of autonomy to ... a guardian; and
- (3) **Many individuals with IDD experience guardianship as stigmatizing and inconsistent with their exercise of adult roles and responsibilities.**

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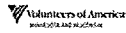
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**Resources**

**National Resource Center on Supported Decision Making** [www.supporteddecisionmaking.org](http://www.supporteddecisionmaking.org)

**MN DHS Videos on Supported Decision Making:**  
[www.youtube.com/playlist?list=PLKdIRbjdmxgeDSVBZhEFyrzlli9zjO3Mc](https://www.youtube.com/playlist?list=PLKdIRbjdmxgeDSVBZhEFyrzlli9zjO3Mc)

**American Bar Association:**  
**The PRACTICAL TOOL**  
[www.americanbar.org/groups/law\\_aging/resources/guardianship\\_law\\_practice/practical\\_tool.html](http://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice/practical_tool.html)




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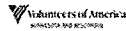
*Resources*

***IADD & Arc Position Statement on Supported Decision Making***

www.aaid.org/news-policy/policy/position-statements/autonomy-decision-making-supports-and-guardianship#.WQpluu8m670

***National Guardianship Association Position Statement on Supported Decision Making***

www.guardianship.org/documents/NGA\_Policy\_Statement\_052016.pdf



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**Center for Excellence in Supported Decision Making**



A Program of VOA MN, funded by  
U.S. DHHS  
Administration for Community Living  
in partnership with  
LSS MN, Wilder Research  
DHS  
MN Elder Justice Center  
WINGS MN

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**Center for Excellence in Supported Decision Making**



*Phone Consultation  
Assessments  
Surrogate Decision Maker Support  
Facilitation of Supported Decision Making  
& Surrogate Decision Making Legal Tools  
WINGS MN*

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**GUARDIANSHIP  
INFORMATION LINE**

952-945-4174  
1-844-333-1748 toll free

CESDM@voamn.org

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Making America's most vulnerable™

**Anita Raymond, LISW, CMC**  
*Center for Excellence in  
Supported Decision Making*  
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[www.voamnwi.org/protective-services](http://www.voamnwi.org/protective-services)  
[www.wingsmn.org](http://www.wingsmn.org)

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