Knowing Your Options: Understanding Legal Guardianship and Less Restrictive Alternatives

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What We Will Cover

- Decision-making basics
- Guardianship
- Alternatives to Guardianship
- Supported Decision-Making
- Self-determination
- Abuse, Neglect, and Exploitation
- Indiana’s WINGS Grant Project
- Questions
- Resources
Decision-Making

- Understanding the issue
- Determining options and consequences
- Gathering information
- Evaluating options
- Making a choice
- Communicating or implementing choice
- Observing results
Guardianship

• Petition filed with physician statement, guardianship registry form.
• Notice to interested parties
• Guardian ad Litem appointed – recommendations to court, not advocate for AIP.
• Hearing – AIP can have counsel, call and cross witnesses
• Court makes determination.
Guardianship

- Substituted decision-making
- Rights removed varies by state
- Oversight of guardianships
- Termination of guardianships
What options are available?

• Not just guardianship!
• Goal is to start with the least restrictive options possible
• Many options can be used in combination or change over time
Spectrum of Assistance

Least Restrictive

- Independence / Interdependence
- Technological Assistance / Informal Supports

Court

- Protective Order
- Temporary Guardianship
- Limited Guardianship
- Full Guardianship

Most Restrictive
Supported Decision-Making

- Ind. Code § 29-3-14-1

“Supported Decision-Making refers to the process of supporting and accommodating an adult in the decision-making process to make, communicate, and effectuate life decisions, without impeding the self-determination of the adult.”
SDM – Plain Language

• Accommodates the decision-making process
• Where people choose and use trusted friends, family members, and/or professionals (“supporters”) to help them through the decision-making process
• Person using SDM retains all decision-making authority
• Concept to increase empowerment and self-determination
Who can use SDM?

- Anyone who needs help making decisions.
- Concept can be used within other decision-making arrangements.
- Any diagnosis or disability
- Capacity as a spectrum
Comparing Options

**SUPPORTED DECISION-MAKING**

Diana makes her own decisions with the help of another person of her choosing.

**POWER OF ATTORNEY**

Diana names someone else to make decisions and act on her behalf.

**GUARDIANSHIP**

Court appoints a person to make decisions for Diana with court oversight.
People with more self-determination have:

- Improved psychological health including better adjustment to increased care needs. - O’Connor & Vallerand, 1994

- Better quality of life, more employment and community integration. e.g. Powers et al., 2012; Shogren, Wehmeyer, Palmer, Rifenbark, & Little, 2014;

- Increased health, welfare, and safety e.g., Khemka, Hickson, and Reynolds, 2005.
Self-Determination Research


• People subjected to overbroad or undue guardianship can experience a “significant negative impact on their physical and mental health, longevity, ability to function, and reports of subjective well-being” - Wright, 2010.
Protection Against A/N/E

- Presumption of capacity
- Dignity of risk
- Prevention through empowerment
- No guarantee of safety under any arrangement
- Mandatory reporting
Indiana WINGS Project Conception

- WINGS Group Members
- Determining who to involve
- Determining where to start
- Understanding what is out there
Indiana WINGS Supported Decision-Making Grant Project

• **Goal:** To develop a county-level judicial reform project that reduces the need for guardianship using supported decision-making.

• **Objectives:**
  – Community education
  – Screening tools
  – Case referral and management model
  – Training for judges and *pro bono* GALs
Indiana WINGS Project Stakeholders

- Project Stakeholders include:
  - The Honorable Gregory Horn, Wayne County Superior Court
  - Indiana Supreme Court
  - Indiana Disability Rights
  - Achieva Resources, Inc.
  - The ARC of Indiana
  - The Indiana Division of Disabilities and Rehabilitative Services
  - The Indiana Division of Aging
  - Indiana Adult Protective Services
  - Indiana Legal Services, Inc.
  - The WINGS/Adult Guardianship State Task Force
Early Planning

• Identification of needs
  – Forms
  – Education – by audience with targeted message

• Project logistics

• Common language
Project Implementation

- Revision of forms – again
- Collecting stakeholder input and feedback
- Ongoing education
- Data collection
- Petition documents and preparation
Legislation Planning

• Engaging stakeholders
  – Aging
  – Disability
  – General

• Opposition
  – Probate bar
  – Professional guardians

• Legislation drafting process
Indiana SDM by the Numbers

- 45 presentations
- 36 project stakeholder meetings
- 20 legislative meetings
- 63 case files reviewed
- 4 clients assisted
- 13 products developed
- 480 hours of documented work (MLK)
Products Developed

- Model SDM Agreement (10 versions)
- Model Physician Statement
- Model GAL appointment order
- Model GAL report
- Termination of Guardianship Template
- One-page handouts
- Audience targeted presentation slides
- Website
- Videos
Successes and Challenges

- THE FORM
- Education, education, and more education
- Combating opposition
- Building Coalitions
- Engaging stakeholders
- LRA Study
Next Steps…

• Continuing education – train the trainer
• Development of materials and resources for families, supporters, attorneys and judges
• Expansion of project to other counties
• Vigilance on the legislative front
How do you fit in?

- Consider or advocate for the least restrictive option to meet the person’s needs
- Support the person’s self-determination as much as possible in the abuse, neglect, and exploitation process
- Develop a model for SDM in your state
- Join or create a WINGS group or “WINGS-like” group
Resources

• Indiana Disability Rights (on.in.gov/INSDM)
• WINGS/American Bar Association (https://www.americanbar.org/groups/law_aging/resources/wings-court-stakeholder-partnerships.html)
• Indiana Adult Guardianship Office (http://www.in.gov/judiciary/ioecs/3425.htm)
• Arc of Indiana (https://www.arcind.org/future-planning/guardianship/)
• National Resource Center for Supported Decision-Making (www.supporteddecisionmaking.org)
Questions
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This product is supported by grant No. 90EJIG0007-01-00 from the Administration for Community Living, U.S. Department of Health and Human Services (DHHS). Grantees carrying out projects under government sponsorship are encouraged to express freely their findings and conclusions. Therefore, points of view or opinions do not necessarily represent official Administration for Community Living or DHHS policy.