

Knowing Your Options: Understanding Legal Guardianship and Less Restrictive Alternatives

Erica Costello, Indiana Adult Guardianship Office
Melissa L. Keyes, Indiana Disability Rights



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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



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

LESS
LIMITING

SUPPORTED DECISION-MAKING



Diana



Supporter

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

POWER OF ATTORNEY



Diana



Power of Attorney
Designee

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

GUARDIANSHIP



Court



Guardian



Diana

Court appoints a person to make decisions for Diana with court oversight.

MORE
LIMITING



Self-Determination Research

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

- When denied self-determination, people experience “low self-esteem, passivity, and feelings of inadequacy and incompetency.” - Winick, 1995.
- 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/iocs/3425.htm>)
- Arc of Indiana (<https://www.arcind.org/future-planning/guardianship/>)
- National Resource Center for Supported Decision-Making (www.supporteddecisionmaking.org)



Questions



Melissa Keyes,
mkeyes@IndianaDisabilityRights.org

317-722-3463

Erica Costello

erica.costello@courts.in.gov

(317) 234-5562

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