Guardianship and Other Alternatives

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Overview

- APSI Background
- Decision-Making Processes
- The Role and Limitations of Guardianship
- Alternatives to Guardianship
- Tips for Families
- Resources
- Questions
APSI BACKGROUND
Background

• APSI provides guardianship and other protective services to adults with developmental disabilities
  – Guardian of the person only
• Guardian of last resort
• About 3,300 clients, representing almost every county
  – Only statewide guardianship program
• Available 24/7 to provide consent
  – APSI is the guardian, not the APSI staff member
Organization

• 9 offices in 5 regions
• 75 PSRs: protective service representatives
  • Average caseload 45-60 individuals
• Medical specialists provide support on complex issues and after hours
By the Numbers:
July 2019-June 2020

- 21,775 in-person visits
- 3,347 annual guardian plans and reports
- 364 long-term moves
- 8,024 after-hours calls
- 12,668 medical informed consents
- 7,398 service informed consents
- 500,000+ miles traveled
DECISION-MAKING PROCESSES
Important Take-Aways

• Guardianship is not mandatory for all people with disabilities
• The right solution depends on many factors
  – And can change over time
• Guardianship does not solve or prevent every problem
• Probate court appointment is required for guardianship
• There are gray areas in guardianship
  – And each court has different perspectives and processes
Competence and Capacity

• Guardianship is based on a finding of incompetence
  – “so mentally impaired . . . that the person is incapable of taking proper care of the person’s self or property . . .”
  – Legal determination by the probate court based on expert evaluation by physician or psychologist
  – Different from other legal definitions of competence
• Capacity is the ability to understand and make a specific decision at a specific time
  – May vary based on the issue to be decided, or based on fluctuations in the person’s condition (even day to day)
  – Relevant to guardianship AND alternatives
Assessing Options

• Guardianship provides important legal authority, but does not solve or prevent every problem
  – Dignity of risk
  – Everyone makes “bad” decisions at times
• Relationships are as important as legal authority
• Decision-making is a skill that can develop over time
Helpful Resources

• Charting the LifeCourse: Tool for Exploring Decision Making Supports
  – Formerly the Stoplight Tool

• ABA PRACTICAL Tool
  – https://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice/practical_tool/
  – Not just for lawyers!
THE ROLE AND LIMITATIONS OF GUARDIANSHIP
The Role of the Guardian

• Probate courts appoint guardians for adults who are not able to make decisions for themselves because of a disability
  – Must be appointed by the court
  – Parents/family members are not automatic guardians
• Guardians provide informed consent
  – Within the scope of their authority
Types of Guardians

- Guardian of the person: makes daily living decisions and provides consent
  - Living arrangements
  - Services: ISP, residential, programming, behavioral
  - Medical, psychiatric, medication
- Guardian of the estate: handles finances and property
- Guardianship may be limited
- Ward: the person under guardianship
Guardianship Duties

- Provide informed consent
- Follow court orders, local court rules, and Ohio Supreme Court guardianship rules
  - Probate Court is the “superior guardian”
  - Guardian of the estate must receive permission for expenses
- Initial and annual training
  - Unless court exempts you
- Annual plan and report with expert evaluation
- Notify the court
  - Moves, abuse/neglect, changes
Guardianship Isn't Always the Answer

• Not every person with a disability needs a guardian
  – Ask: what would a guardian do to change this situation?
• Not every decision must be made by the guardian
  – Especially minor daily decisions, like what to wear
Limitations of Guardianship

• Legal limitations
  – Guardians can only decide what the probate court allows
    • Example: guardian of the person or guardian of the estate
    – Can be limited to medical or mental health or other specific issues
    – Guardians are not allowed to make some very personal or invasive decisions
    – Providers may be required to follow different rules

• Practical limitations
  – Guardians can provide consent, but can't always make the person comply
Note re Paid Service Providers

• Courts have various perspectives and processes
• Rule 66.04(D): "shall not issue letters of guardianship to any direct service provider to serve as a guardian for a ward for whom the provider provides direct services, unless otherwise authorized by law."
• Rule 66.09(G): "Except as provided in Sup.R. 66.04(D), a guardian shall not provide any direct services to a ward, unless otherwise approved by the court."
Rights Under Guardianship

• Guardianship does not terminate all rights
  – Law is not always 100% clear, many strong opinions on specific issues
• Frequently asked questions
  – Voting
  – Driving
  – Marriage, relationships, and sexuality
• Due process rights in guardianship case
• DD system rules apply to county boards and providers
ALTERNATIVES TO GUARDIANSHIP
Why Consider Alternatives?

- Guardianship is the most restrictive option
  - Long term
  - Court involvement
- Alternatives can be more effective—in multiple ways
- Research shows positive connection between self-determination and better health, safety, independence, and integration
Alternatives to Guardianship

• Informal supports
• Supported decision-making
• Releases, authorized representative
• Powers of attorney
• Trusts, payees, STABLE accounts
• Conservatorship
• Also consider less restrictive forms of guardianship, such as limited guardianship
• Note: Capacity matters for all alternatives
Supported Decision-Making

• Not a process, form, or program—it’s a paradigm
• Working with a person and identifying the areas where the person needs help
  – And then finding a way to provide that help
• SDM looks different for each person
How APSI Uses Supported Decision-Making

• Guiding principles for all of our services
  – Person-centered, self-determined to the greatest extent possible
  – Least restrictive: both the service itself and the decisions we make
  – Best interest, informed consent

• Current initiatives
  – Guardianship to Restoration Transition
  – Targeted Decision-Making
TIPS FOR FAMILIES
Services

• Consider incorporating development of daily living skills and decision-making into service plans
  – School (IEP)
  – Vocational Rehabilitation (IPE)
  – DD Services (ISP)
• Use assistive technology to support needs
Probate Courts

- Every probate court has different processes
- Some have online resources and forms/packets
  - Some have online records
  - Search [county] probate court for website
- Some have designated guardianship staff
  - Clerks and other staff cannot provide "legal advice"
- Issues to explore:
  - Forms
  - Timing (when to file, hearing)
  - Education
  - Reporting
  - Direct services
  - Background checks (BCI, FBI)
  - Co-Guardians
Guardianship Process

- File application
- Court schedules hearing
- Service on next of kin
- Court investigator meeting
  - Notices to person
  - Investigator's report
- Court hearing
- Appointment
- Ongoing responsibilities
Do You Need an Attorney?

• Issues to consider:
  – Filling out forms
  – Appearing at hearing
  – Service of next of kin
  – Potential for conflict (especially between divorced parents)
  – Guardian of estate
  – Financial considerations
  – Reporting to the court
RESOURCES
Resources

• National Resource Center on Supported Decision-Making [www.supporteddecisionmaking.org](http://www.supporteddecisionmaking.org)
• Jenny Hatch Justice Project [www.jennyhatchjusticeproject.org](http://www.jennyhatchjusticeproject.org)
• Ohio DD Council [https://ddc.ohio.gov/guardianship-estate-planning](https://ddc.ohio.gov/guardianship-estate-planning)
• Disability Rights Ohio [https://www.disabilityrightsohio.org/guardianship](https://www.disabilityrightsohio.org/guardianship)
Questions?

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