

Guardianship: Supported Decision Making for Individuals with ID/DD

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AGENDA

- What is legal Guardianship?
- Does my child need a legal guardian? What are the pro's and con's?
- What types of Guardianships can be appointed? What rights can be preserved?
- How do I file to become my child's Guardian?
- What are my duties and responsibilities as Guardian?
- What are alternatives to Guardianship? Powers of Attorney; Health Care Proxy; Representative Payee; Special Needs Trust Trustee

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What is Legal Guardianship?

- At age 18 individuals with disabilities reach the age of majority. Parents no longer have legal rights to make medical, housing, legal, or other decisions for their family member.
- Guardianship means a person or agency is appointed by the Court to act on behalf of the individual.
- Alternatives to Guardianship should be considered since legal rights are removed.

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What types of Guardianships can be appointed?

- Limited Guardianship
- Plenary Guardianship
 - Guardian of the Person
 - Guardian of the Property

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Limited Guardianship

- Limited Guardianship is a court determination of incapacity that allows the individual to retain the right to make certain decisions
- May include decisions on housing, medical treatment, education, vocational services, finances and legal matters
- Maximizes autonomy while providing protection from harm
- Functional abilities are identified and protected

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Plenary Guardianship

- When a person is found by the court to be incapacitated and therefore unable to make or express decisions for him or herself
 - Guardianship of Person: decisions on housing, medical treatment, education, vocational services
 - Guardianship of Property: legal and financial decisions

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What are the Duties and Responsibilities of a Guardian?

- Personal visits
- Annual report to the courts
- The balancing act - promoting autonomy and independence while protecting from harm
- Guardians are required by law to promote self-determination. Supported decision making facilitates the person's participation in decisions.

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Responsibilities of a Guardian: Helping the Individual to Have a Good Life

- Supported Decision making
 - Help to achieve goals, have needed supports, wishes and preferences respected
 - Informed consent
 - full understanding of concern, pros and cons, consequences; voluntarily given; *be sure to include the individual*
 - Surrogate decisions
 - Substituted Judgment : *what the person would do*) - advocate for wishes and preferences if it would do no harm.
 - Best Interest decisions : *what a reasonable person would do*. If preferences cannot be determined - *Not* decisions in the interest of others.

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How Do I Become My Child's Guardian?

- Petition the Court for Guardianship using an attorney *OR*
- Use the "Pro Se" process to petition without an attorney
- Two medical certifications are required
 - Medical doctor and licensed Psychologist or Psychiatrist (within 30 days of application)
- Fees include Court fees, Court appointed attorney fees, medical certifications

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What are Alternatives to Guardianship?

- Powers of Attorney and Health Care Proxy
 - Capacity to understand POA is required. Use of an attorney is recommended.
 - Revocable document covering person or property
 - Can be changed at any time without Court involvement
- Representative Payee for Social Security Benefits
- Trustee for a Special Needs Trust

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What Is a Special (Supplemental) Needs Trust (SNT) ?

- A way to set aside funds for a person with a disability without jeopardizing vital government benefits (e.g., SSI, Medicaid, Section 8 housing).
- Two Types of SNT's:
 - Third Party funds from parents, grandparents, friends, insurance.
 - First party funds from the beneficiary, a settlement, direct inheritance, earnings, savings

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What Is a Special Needs Trust (SNT) ?

- Also known as a Supplemental Benefits Trust
 - Funds used to supplement public benefits for improved quality of life
- The beneficiary does not have direct access to the trust
- Prevents beneficiary from owning assets that could eliminate means tested government benefits

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Benefits of a SNT

- The beneficiary may continue to collect benefits: SSI, Medicaid, Food Stamps, HUD Housing, etc.
- The trust can provide things to enhance his or her life, such as personal care assistance, transportation, education, recreation, clothing, electronics, furniture, etc.
- The trust protects assets from being claimed by creditors or government agencies.
- The beneficiary is protected from being exploited through the appointment of a trustee.

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Conclusion: Does my child need a legal Guardian?

- Will alternatives to Guardianship suffice?
- Decide what's best for your child's needs and protection.
 - Determine functioning abilities and supports available for decision making
 - Consult an Disability rights or Elder Law attorney
 - Consult a licensed Psychologist with expertise in Guardianship and functional assessments

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