

**The Arc of NW Wayne County/The Arc of WW Wayne County
After I'm Gone Program
Information Sheet**

Legal Decision Making

Summary Statement

*Adaptation of the "Statement of Principles" by the Coalition
on Alternatives to Guardianship*

Every person can make choices and has a right to make decisions. People who have intellectual disabilities may express those choices/decisions in nontraditional ways. Any legal system or proceeding which deprives an individual of his/her right to be accommodated and supported in choosing and making decisions and which appoints a substitute decision-maker based on tests of competence, makes that person vulnerable and deprives him/her not only of his/her right to self determination, but also of other rights which should be inalienable.

Principles

- Each individual can choose and make decisions about his/her life
- Each individual has the right to make decisions (self- determination)
- Individuals may want help from other persons of their choosing with whom they have a trusting relationship, including family members or friends, to make decisions or have them interpreted, and to communicate them to others. This is called supported decision making
- Individuals who have an intellectual disability may communicate choices, wishes, likes, and dislikes in non-traditional ways which can include actions rather than language. Friends, family members, and others who are trusted by the individual, can help interpret these decisions
- This natural independence of people must be recognized and supported. Decisions that are made with such trusted, supportive relationships must be given status and validation

- e All adults have the right to make decisions with support or to name a substitute (i.e. by power of attorney) to make decisions for them
- e Laws and/or policies that do not recognize supported decision making or that protect other interests at the expense of the individual's right to self determination discriminate against persons who have an intellectual disability and make them more vulnerable
- e Individuals should never be assessed to determine competency; decisions should be reviewable if there is a concern that the will of the individual is not being respected or that the individual is being exploited
- e Any legal system or proceeding which sets up a test of competency to be used to appoint a substitute decision-maker puts the individual at risk of losing other rights
- e A decision that could not have been made by the individual without support, i.e. consent for non-therapeutic sterilization, experimentation, or other non-therapeutic procedures which could offend human dignity, should not be made without supported decision making relationships

Past Reasons for Seeking Guardianship

- Medical reasons
- Contracts
- Decisions about programs, records, etc...
- Administrative convenience
- Financial decisions
- Placement decisions
- Sex and related issues
- What will happen when parents or family are no longer around?

Alternatives to Guardianship

- Advisors, Advocates
- Person-Centered Planning
- Durable Power of Attorney
- Durable Power of Attorney for Healthcare or Designation of Patient Advocate
- Protective Order
- Trusts
- Contracts-Void vs. Voidable
- Finances
 - o Representative Payee
 - o Limited Bank Account
 - e Co-Signer
 - e Ceiling Limit Account
 - e Pour-over Account

Why Avoid Guardianship?

- Avoid public declaration of incompetency
- Promote independence, dignity, and freedom of choice
- People deal with guardian-not person
- Expense-attorneys, hearings, evaluations
- Courts don't always follow law (partial vs. plenary, promote independence, etc...)
- Very difficult to modify or terminate
- Attorneys and Guardian Ad Litem-very little training
- Corporate guardian problems-take money and independence

It simply doesn't do what you want it to do!

“We have to reject the very idea of incompetence. We need to replace it with the idea of ‘assisted competence’. This will include a range of supports that will enable individuals with cognitive disabilities to receive assistance in decision-making that will preserve their rights...”

Thomas Nerney, Director of Self Determination for Determination for Persons with Developmental Disabilities

- The Arc of Northwest Wayne County and The Arc of Western Wayne County can provide you with sample Power of Attorney and Patient Advocate forms that can be used to secure and maintain services.
- To apply for guardianship, you must go through a community mental health agency (or hire a private attorney who will assist with the guardianship petition process). To receive assistance with the process through a mental health agency, contact **Detroit Wayne Integrated Health Network (DWIHN)** at **800-241-4949**. Tell DWIHN that you need assistance with applying for guardianship for your loved one. Ask which supports coordination agencies can assist you with this process. You will choose a supports coordination agency and they will assist with the process to make sure that evaluations, meetings with a psychologist, as well as an Informed Consent Board Hearing are done.

What do I need to know next?

- e Once documents are completed (guardianship or Power of Attorney, Representative Payee, etc...), make sure that family members, school, doctors, etc...know what you have in place for your loved one
- e Copies of documents should be given to school, doctors/hospital, bank and anyone else with whom you speak/work with on behalf of your loved one
- e Don't wait for an emergency to let people know that you have the authority to make decisions on behalf of your loved one
- e Keep original copies of documents. Give out copies. If someone wants to see the original, have them make their own copy. Keep originals in a safe place-they are legal documents
- e Power of Attorney documents do not need to be renewed. They are valid from the date signed and don't need to be changed unless the person chooses to change it
- e Guardianship will need to be renewed. Time of renewal will depend on what kind of guardianship is in place
- e If a partial guardianship is in place, it will need to be renewed every five years. Paperwork will be sent to you by the court for this process. If you choose not to renew it, it just lapses. You can either reapply for guardianship at a later time or choose to put alternatives in place (see previous information)

For more information contact:

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