

Supported Decision Making; Rethinking Guardianship

Governor's Council on Disability and Special Education
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Today's talk:

- Overview of Guardianship
- Key Points about Supported Decision Making
- Next Steps
- Questions

Alaska's Guardianship;

- A full guardian can make all decisions for another person, who is called a "ward".
 - Some guardians include wards in decision making; allow and encourage choices
- A limited guardian makes fewer decisions
- A conservator makes decisions about money and how it is managed
- See, <http://www.courts.alaska.gov/shc/guardian-conservator/guardianship.htm>

Going to Court: Guardianship Order

- Legal capacity to make decisions is a "yes or no" question.
- The judge is only looking at capacity at the time of the court case.
- The judge is not thinking about whether the person with a disability has strong supporters
- The judge is not thinking whether the person with a disability has good, consistent access to services

What's good about guardianship?

- Can protect against abuse and exploitation
- Provides a format and a standard for decision-making
- Makes it clear who is the “decider”
- Insures there is someone with authority to act in an emergency
- Provides third parties certainty about the validity of contracts and debts
- See, <http://www.dlcak.org/files/pdf/Publications/GuardianshipinAK.pdf>

What's so bad about guardianship?

- Loss of independence, self-expression, and possibly integration
- Loss of dignity & dignity of choices about risk
- Loss of interest in planning or taking responsibility
- Loss of civil rights
- Possible exploitation by abusive guardian or neglect
 - OPA Public guardians: 100 wards per guardian as of Feb 2017

Common Changes Made to Guardianship Laws

- Changing the definition of capacity
- Placing limits on guardians' authority
- Encouraging limited guardianship/conservatorships
- Making other alternatives more available, e.g.,
 - Powers of attorney
 - Health care advance directives

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What if we did the legal part completely differently?

- What if we treated “legal capacity” as something that changes with the decision to be made?
- What if we treated “legal capacity” as something that was increased by learning and access to information?
- What if we could write a legal agreement that built in support for higher risk decisions?

COULD WE WRITE AGREEMENTS THAT REPLACE GUARDIANSHIP ORDERS?

Key Points about Supported Decision Making

- Definition
- Principles

Definition of Supported-Decision Making

- Relationships, practices, arrangements, and legal agreements
- Formal or informal
- Designed to assist an individual with a disability
- Help a person make decisions and communicate to others decisions about his or her life

Principles of Supported Decision Making

- People do not inherently lack capacity
- Everyone has a will and preferences
- Those can be expressed by the person
 - understood (interpreted) by others who know the person well & are in a voluntary, trusting and committed relationship

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Principles: Supported Decision Making is an Accommodation

- Understand information, issues, and choices
- Focus their attention in decision making
- Weigh options
- Ensure decisions are made on their own preferences
- Interpret and/or communicate decisions to other parties

Principles: Supported Decision Making is Individualized

- Everyone's decision-making process is going to look different
- Support for decision-making is really just an individualized accommodation to assist another life skill

Principles: Equal Rights, Equal Access

- We all use Supported Decision Making every day. None of us makes decisions completely on our own
- A RIGHT to support for decision-making is consistent with public policy and with our community values
- Equality of rights; even if someone needs more or different help

BUT...How do we write legal agreements to replace Guardianship Orders??

- Advanced Healthcare Directives
- Financial planning/Conservatorship paperwork
- Division of Vocational Rehabilitation; Individual Plans for Employment
- Healthcare; informed consent
- School Districts; transition planning in Individualized Education Plans
- Medicaid; person-centered planning

ALSO... Other states have already started changing their laws . . .

- Texas: changed laws and also included support in community services
- Massachusetts: pilot project modeled on Texas
- ARC of Indiana: researched changes needed to state law and also next steps (with publicly funded grant)
- Other states have “WINGS”: stakeholder working groups to identify barriers and plan next steps

3 Next Steps

- Raise awareness about need; teach self-advocates, parents, services providers
- Develop Alaska standards and work plans with stakeholders
- Institutional change to laws, courts, methods of doing business, ways of providing public services

QUESTIONS?