



Guardianship and Reasonable Alternatives



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Objectives

- Present a model of decision making
- Review components of good decision making
- Explore forms of substituted judgment
- Review guardianship as one of many forms of substituted judgment

An opportunity for changing the way decisions are made

- Decision-making *for* people vs. Decision-making *with* people
- Choice vs. Informed choice
- Over-protection vs. Dignity of risk

Fundamental Concepts

- Self-Determination
 - Developmental Model
 - Habilitation
- Principles Underlying Decision Making
 - Least restrictive alternative
- Civil Rights

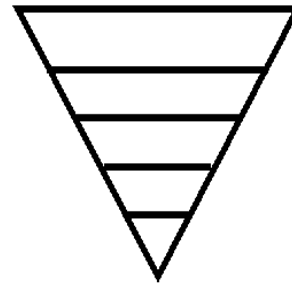
Principles Underlying Decision-Making

- Person Centered
- Least Restrictive Alternatives and Environments
- Informed Consent
- Substituted Judgment
- Best Interest

Person Centered

- Desirable Lifestyle
- Desirable experiences
- Quality of life
- Dreams, desires, and meaningful experiences

Least Restrictive



Supported Decision Making

Power of Attorney

Representative Payee

Conservatorship

Guardianship

Informed Consent

- Ability to make and communicate decision
- Understands relevant information including risks and benefits
- Decision is voluntary not coerced

Important Considerations for Substituted Judgment

- Promotes values of self-determination
- Considers well-being of individual
- Least restrictive alternative

Best Interest

- Standard of decision making
 - Least intrusive
 - Least restrictive
- Knowledge of individual's current and previous expressed desires

Adolescents with Disability

- Plan for assuming adult rights and responsibilities
- Decision-making transfers to individual at age 19
- Recognition of decision-making assistance other than guardianship

Adults with Cognitive Impairment

- Acquired disability (Traumatic Brain Injury, age related dementia, spinal cord injury)
- Change in circumstances for individual with existing disability
- Onset of Alzheimer's Disease

Supported Decision Making

- Disability does not require formal decision making assistance
- Friends, family, support team
- Assistance from others within the community



Forms of Substituted Judgment

- **Power of Attorney** (Uniform Power of Attorney Act, Neb. Rev. Stat. §§30-4001 – 30-4045)
- **Representative Payee** (Title XVI, Social Security Act)
- **Conservatorship** (Conservatorship & Guardianship, Neb. Rev. Stat. §§30-2601 – 30-2661)
- **Guardianship**

Guardianship

- Court appointed; terminated
- Periodic reporting requirements
- Decision making about the person (may also make decisions about the person's money and property if also a Conservator)

Guardianship

Guardianship should be used sparingly, precisely because Guardians have so much power. (NebGuide)

- Limited guardianship
- Full guardianship (most restrictive of all substituted decision making)

Considerations...

- If a parent becomes a guardian or assists in decision-making for an adult son or daughter, the role changes.
- Any person who chooses to become a guardian should consider the time required and their own willingness to serve in this role
- The person is the Guardian's primary responsibility
- The person must be included in decision making to the fullest extent possible
- Guardians must consider the balance between a desire to protect the person and the recognition that there must be risk to have a full, satisfying life
- The guardian works to ensure that placement is in the least restrictive alternative

The need for a Guardian should be reassessed regularly

- As people have learned how to make informed decisions they may have:
 - Overcome the need for a guardian
 - The opportunity to change the guardianship from full to limited
- The guardian has a duty to return to the court to legally reduce or remove the guardianship if it is no longer necessary!

Evaluative Criteria for Decision-making

- What is the issue and what does it mean for the person?
- Why is the action necessary?
- Has the person been informed?
- What are the person's preferences?
- What is the outcome of this decision?
- What is the benefit of this decision?

Evaluative Criteria for Decision-making

- Why now, not later?
- What will happen if no decision is made?
- Are there any alternatives?
- Is this the least restrictive alternative?
- What are the risks in the decision?
- What justifies the decision?

An Introduction to the Office of Public Guardian

Maria Fischer-Lempke, J.D.
January 12, 2016



What We Do: The Role of the Office of Public Guardian

The Office of Public Guardian serves when:

- It is established the person needs a guardian (guardianship is necessary; no alternatives to guardianship are appropriate)
- There is no one else to serve in the role of guardian (last resort)
- The Office of Public Guardian has capacity

This role is fulfilled by:

- 12 Associate Guardians
 - Capacity for average of 40 persons each
- Court visitors/Guardians ad litem



Volunteer Court Visitor Program

- Volunteer recruited and trained by our office
- Used to help determine least restrictive alternative
- Provide more information to judge

Process

- When a petition is filed with OPG a court visitor is assigned by the county court
- Completes an interview process with potentially incapacitated person and any other interested parties
- Gathers all information regarding the potentially incapacitated person's life using a screening tool
- Compiles all information in to a report then submits to the court



Office of Public Guardian Service Areas



Fulfilling Our Mission – Additional Responsibilities of the OPG



The Office of Public Guardian also provides:

- **Education**
 - To all guardians and conservators
 - Court visitor training
 - About rights within the process
- **Information & Support**
 - About the Office of Public Guardian
 - About guardianship, conservatorship, and alternatives
 - To all guardians and conservators
- **Recruitment**
 - Successor guardians and conservators
 - Court visitors

For more information

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