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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

- Representative Payee (Title XVI, Social Security Act)
- Conservatorship (Conservatorship & Guardianship, Neb. Rev. Stat. §30-2601 – 30-2661)
- Guardianship

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?

- 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

Mario Richter-Umpila, J.D.
January 12, 2016

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

The Office of Public Guardian serves when:
- If it 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 (not resort)
- The Office of Public Guardian has capacity

This role is fulfilled by:
- 12 Associate Guardians
  - Capacity for average of all persons each
  - Court Visitors/ Guardians of them

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 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
- Completes all information in a report then submit to the court
For more information

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