



GUARDIANSHIP & MENTAL HEALTH: MYTHS & FACTS

Historically, guardianship has been viewed as a means of protecting an adult who may have a mental health diagnosis, or someone who simply may not be making the safest choices for themselves. Family members and caregivers of persons with mental health issues may find themselves in a situation where a doctor, social worker, or other professional is recommending guardianship. While in some cases guardianship is necessary, it should not be the first step. Even a person with significant impairments may have the ability to participate in alternatives to guardianship, such as a health care directive (including advance psychiatric directives), a supported decision-making agreement, or simply being part of their own care and recovery plan.

What is less often discussed is that guardianship actually removes a person's rights to make many decisions for themselves; even if a guardian intends to significantly include the person under guardianship (called a "ward") in decision-making, the guardian is not legally mandated to do so in many areas. Research and experience have shown that having a guardian can lead to the person feeling powerless and infantilized, and this can lead to defiant, resistive attitudes or behavior.

There is an emerging movement in Minnesota and across the nation that encourages the involvement of the person, seeking opportunities for growth and to maximize independence while addressing vulnerabilities, called Supported Decision Making. In this model, the person is encouraged to identify who he or she would like to be on their "team", or be supporters, in making various decisions or having conversations in areas such as: medical decisions, applying for governmental benefits, and making decisions about where to live. Rather than involving the courts and asking a judge to make a legal, and often permanent, decision that the person is incapacitated and in need of a guardian to make decisions for them, Supported Decision Making recognizes that although the person might need help making decisions, they along with their team of supporters (professionals, family, friends, community), may be able to get their needs met without court intervention.

GUARDIANSHIP MYTHS & FACTS

Myth: A person living with mental health challenges needs a guardian.

Fact: Decisions about the need for guardianship are complex and should never be based purely on a diagnosis of any disease or disability. Guardianship is rarely needed in situations where someone has a mental illness if there are supports available and/or the person is not resisting help. There are many ways to support a person without the use of guardianship. Depending on the severity of the person's disease process and their individual abilities to express their preferences and wishes, many alternatives can be considered such as appointing a health care agent who can ensure necessary services are received when the person can't speak for themselves. A trusted family member or other support person can talk with the person and medical and psychiatric teams about signing a release of information so the supporter can continue to be involved in conversations about medical and psychiatric care.

Myth: A guardian is necessary for a person to be placed into a care setting such as a psychiatric hospital unit.

Fact: Requiring a guardian be appointed because of a diagnosis for admission to a care setting is discriminatory, removes a person's basic decision-making rights, and is not required by law. Of course, ensuring that a payer source is available and accessible to a facility is important, and often can be achieved through obtaining representative payee or establishing a fiduciary, such as a trustee, attorney-in-fact under a power of attorney, or a conservator. Additionally, engaging with family or other supports of the individual to sign admission papers and consents is helpful when decisional capacity is in question. If a person meets statutory criteria, a mental health commitment may be appropriate if a person needs involuntary mental health treatment.

Myth: An adult who is under commitment needs to have a guardian appointed.

Fact: This is not necessarily true. Ideally, the person under commitment will receive appropriate mental health care or treatment to stabilize and be discharged from the commitment. Once stable, the person should complete a health care directive, including an advance psychiatric directive, so there is a decision maker in place should the person become unstable again in the future. Additionally, it is important to help the person build supports to ensure they are successful with managing their mental health symptoms and remaining safe when discharged from the hospital. This can be achieved through case manager support, informal support of family or friends, home care services, etc.

Myth: Guardianship can fix the problems a person might experience during a mental health crisis or help avoid future crises.

Fact: Often a mental health crisis is compounded by abuse of drugs or alcohol, loss of housing or transportation, perhaps even loss of a stable employment. If a person's behaviors during a crisis sabotage others' efforts to help, guardianship is frequently considered as a means to fixing such problems. However, guardianship authority is rarely able to address behaviors; instead a mental health commitment may be necessary to stabilize the person's mental health. Once stabilized, the person may be able to complete an advance psychiatric directive, and/or work with trusted supporters to establish new goals and continue to work with mental health and community supports to attain these goals.

**For more information about guardianship, as well as options to meet a person's needs in the least restrictive manner, contact the Center for Excellence in Supported Decision Making:
Guardianship Information Line
952-945-4174 / 844-333-1748 (toll free) cesdm@voamn.org**

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