



MINNESOTA AND WISCONSIN

GUARDIANSHIP & TRANSITIONS: MYTHS & FACTS

Historically, families who have children with intellectual or developmental disabilities have been advised, even directed, to seek guardianship as their child reaches 18, the legal age of majority. Families are often told that once their child is legally an adult, they will no longer be able to participate in medical, education, or social service conversation with providers, and the remedy, they are told, is to seek guardianship.

What is less often discussed is that guardianship actually removes a person's rights to make many decisions for themselves; even if a guardian strongly intends to include the person under guardianship (called a "ward") in decision-making, the guardian is not legally mandated to do so. Sometimes, even unintentionally, having a guardian can lead to the ward feeling powerless and infantilized, and this can lead to defiant, resistive behavior or attitudes. This approach also fails to acknowledge that almost all young people, including those without disabilities, still rely on their parents and families for decision making. It is the rare 18-year-old who is ready to be completely independent from family, never needing further guidance and assistance to address some poor choices. In fact, we know now that the human brain is not even fully developed until at least 25 years of age; why then are we expecting our young people with developmental or intellectual disabilities to be fully capable of exercising good decision making when our young people without disabilities are not even expected to do so?

There is a new movement sweeping the nation, and in Minnesota, to approach this situation in a manner that encourages involvement of the person, seeking opportunities for growth and to maximize independence while addressing vulnerabilities, called Supported Decision Making. In this model, the young person is encouraged to identify who he or she would like to be on the "team", or be supporters, in making various decisions or having conversations in areas such as: medical decisions, development of IEP plans, applying for governmental benefits, and making decisions about where to live and work. 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 we all need help making decisions, and our supporters can assist us without court intervention.

GUARDIANSHIP MYTHS & FACTS

MYTH: *Guardianship is required for a person with an intellectual or developmental disability once that person turns 18.*

FACT: Guardianship is not required by MN law or policy to receive county, state, or federal services, to sign an IEP, or to move into to a residential home. Families and individuals are often told this, even by professionals, but that is a mistake of professionals, not a statement of law.

MYTH: *If a person has a disability and can't make decisions independently, that person must have a guardian appointed to make decisions for them.*

FACT: Many people are willing to have help making decisions, and can be very successful with support from

trusted others in decision making.

MYTH: *Doctors won't talk to me as a parent once my child turns 18, so I need to obtain guardianship.*

FACT: Even a person with a disability can sign a Release of Information, if the person understands the form when someone explains it to them; this will allow health care professionals to talk to supporters, and involve them in decision making. (if a person's physical disability prevents them from being able to sign, an x or witnessed verbal consent is suitable.) Ideally, the person will complete a Health Care Directive, appointing a health care agent to be able to participate in medical discussions and decisions. Even a person with significant disabilities may still be capable to appointing a health care decision-maker or supporter.

MYTH: *Guardianship is required for a person with an intellectual or developmental disability to prevent the person from making bad choices.*

FACT: Guardianship does not remove all risk. Rarely can guardianship effectively prevent a person from ever making any bad choices, short of placing a person in a overly-secure living environment which removes all risk, but also, places excessive restrictions and security through well-meaning desire to remove all chance of harm. Instead, persons with disabilities should receive guidance, coaching, and support to learn to recognize risk and maximize independence at levels reasonable to the person's disability. The person and their support team (families, professionals, trusted others of their choosing), can work together to identify areas of risk and vulnerabilities, and develop plans to avoid trouble spots and ways to address the trouble when it does arise. No one is exempt from making bad choices; we all do it, and we all learn from our mistakes. We should work with persons with disabilities to address bad choices the same way we work with our family members who don't have disabilities when they make bad choices.

MYTH: *Guardianship/Conservatorship is required for a person with an intellectual or developmental disability to prevent the person from being financially exploited.*

FACT: Unfortunately, even people under guardianship/conservatorship may be financially exploited. We shouldn't engage this intrusive court action simply because of something that may happen; instead, we should work with the person and the situation to put measures in place that will address vulnerabilities to financial exploitation, such as representative payee, or utilizing banking tools such as on-line monitoring to enable a trusted family member to keep an eye on financial transactions. Another approach would be developing systems where the person has access to less cash on hand, to minimize giving away all of their money, or utilizing debit or store gift cards. It may be advisable to contact the credit companies to put a flag out so that others don't try to take out credit cards on the person's name.

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

RESOURCES

- Volunteers of America Minnesota and Wisconsin
Estate & Elder Law Services www.voamnwi.org/estate-and-elder-law
Center for Excellence in Supported Decision Making www.voamnwi.org/cesdm
- National Resource Center on Supported Decision Making
www.supporteddecisionmaking.org
- American Association on Intellectual and Developmental Disabilities and The Arc Joint Position Statement
<http://aaidd.org/news-policy/policy/position-statements/autonomy-decision-making-supports-and-guardianship#.WactHe8m7IU>
- National Guardianship Association SDM Position Statement
www.guardianship.org/documents/NGA_Policy_Statement_052016.pdf
- American Bar Association Resolution on Supported Decision Making
www.americanbar.org/content/dam/aba/administrative/law_aging/2017_SDM_%20Resolution_Final_authcheckdam.pdf
- American Bar Association: The Practical Tool
www.americanbar.org/groups/law_aging/resources/guardianship_law_practice/practical_tool.html
- WINGS MN (Working Interdisciplinary Network of Guardianship Stakeholders)
www.wingsmn.org
- MN DHS Jonathan Martinis Supported Decision Making video series
www.youtube.com/watch?v=u04mK-h-Tks&list=PLKdIRbjdmxgeDSVBZhEFyrzIli9zjO3Mc