

CESDM

CENTER FOR EXCELLENCE
IN SUPPORTED DECISION MAKING



Guardianship & Mental Health

Historically, guardianship has been viewed as a means of protecting an adult with a mental health condition, 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), supported decision-making assistance and / or agreements, 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 subject to guardianship 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 and resistive attitudes, actions, or responses.

GUARDIANSHIP MYTHS & FACTS

Myth: *A person living with mental health challenges needs a guardian in order to stay safe in the community.*

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's mental health symptoms prevent them from being able to speak for themselves.

A Psychiatric Health Care Directive, as a stand-alone document or as part of a standard Health Care Directive, may be a good option for someone in this circumstance who has a disease or condition with fluctuating or cyclical periods of psychiatric instability. The person may be able and willing to sign a Release of Information consent form so the supporter can talk with medical and psychiatric teams and continue to be involved in conversations and decisions about medical and other health care, as well as psychiatric care and treatment.

Even a person with significant disabilities who can't understand complicated medical or psychiatric treatment decisions may still be capable of appointing a health care and/or psychiatric decision-maker.

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 rep 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 used if a person needs involuntary mental health treatment; this is a more temporary intervention than guardianship and may be all that is needed to help the person recover or become psychiatrically stable.

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, after which the commitment would be terminated. 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's symptoms or psychiatric instability cause an inability to be involved in their own decision making 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, psychiatric support services, and other approaches.

Myth: *A Vulnerable Adult who has been abused or exploited requires a Guardian.*

Fact: The court appointment of a guardian or conservator may or may not be the best remedy for protection against abuse or financial exploitation. There are many interventions to consider, depending on the circumstances involved. It is necessary to consider the actual risk of future abuse or exploitation, as well as what protections can be implemented to effectively prevent further abuse or exploitation.

In all cases, it is important that any abuse or neglect be reported to the Minnesota Adult Abuse Reporting Center at 844-880-1574 for possible investigation and to mobilize the unique resources of county adult protective services for the protection of the vulnerable adult.

Myth: *Guardianship/Conservatorship is needed to prevent a person from being financially exploited.*

Fact: Unfortunately, even people under guardianship/conservatorship could be financially exploited. This intrusive court action should not be engaged simply because of something that may happen; instead, professionals, families, and other supporters should work with the person and the situation to put measures in place that will address vulnerabilities to financial exploitation, such as a representative payee, power of attorney, trust, or utilizing banking tools such as on-line monitoring to enable a trusted

person 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 or losing all of their money; utilizing debit or store gift cards is an excellent way to ensure the person still has ability to make purchases while protecting overall assets. It may also be advisable to contact the credit companies to flag inquiries and require alerting the person or their financial supporter so that others don't try to take out credit cards in the person's name.

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 to fix 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.

As a relatively permanent tool, guardianship should not be utilized if there is likelihood that a Civil Commitment will help the person stabilize and regain ability to be make personal decisions, independently or with the support of trusted others.

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