

CESDM

CENTER FOR EXCELLENCE
IN SUPPORTED DECISION MAKING



Guardianship & Older Adults

Historically, guardianship has been viewed as a means of protecting an older adult who may experience cognitive impairment, or have a diagnosis of Alzheimer's or related dementia, or someone who may not be making the safest choices for themselves. Family members and caregivers of older adults 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 is the most restrictive tool, and is a last resort option. Even a person with significant impairments may have the ability to participate in alternatives to guardianship, such as a health care directive or supported decision-making.

What is less often discussed is that guardianship removes a person's rights to make many decisions for themselves; even if a guardian intends to significantly include the person subject guardianship in decision-making, the guardian is not legally mandated to do so in many areas. Sometimes, even unintentionally, having a guardian can lead to the person feeling powerless and infantilized, and this can lead to defiant and resistive behavior or attitudes.

GUARDIANSHIP MYTHS & FACTS

Myth: *A person living with Alzheimer's Disease or other cognitive impairment needs a guardian.*

Fact: Decisions about the need for guardianship are complex and should never be based purely on a diagnosis of Alzheimer's or any other disease or disability. Guardianship is rarely needed in situations where someone has Alzheimer's disease if there are supports available and the person is not resisting help. There are many ways to ensure that

someone with dementia has their needs met without the use of guardianship. Depending on the person's stage in the disease process and their individual abilities to express their preferences and wishes, many alternatives can be considered such as informal decision making on behalf of the older adult or appointing a health care agent who can ensure necessary services are received. Or the person may be willing and able to sign a Release of Information consent form, enabling a trusted family member or other support person to be involved in conversations with medical and other health care providers about medications and other health care, and residential decisions.

Myth: *A guardian is necessary for a person to be placed into a care setting such as Memory Care.*

Fact: Requiring a guardian be appointed 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 or other care provider is important, and often can be achieved through obtaining a Representative Payee through the Social Security Administration, Railroad Retirement Board, or Veterans Administration fiduciary, or establishing another fiduciary, such as a trustee, attorney-in-fact under a power of attorney, or a conservator. Another option is to become the authorized representative for Medical Assistance. Additionally, engaging with family or other supporters to sign admission papers and consents as informal decision makers is helpful when decisional capacity is in question and there is no controversy.

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

Fact: Guardianship is a power of consent, not a power of removing all risk. 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 additional interventions to consider, depending on the circumstances involved. 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, report any abuse or neglect to the Minnesota Adult Abuse Reporting Center at 844-880-1574 for possible investigation and, if applicable, to mobilize the unique resources of county adult protective services for the protection of the vulnerable adult.

Myth: *Guardianship/Conservatorship is required for an older adult with cognitive deficits to prevent the 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 something *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 banking tools such as on-line monitoring to monitor 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 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.

Guardianship Information Line

952-945-4174

844-945-4174 (toll free)

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