



GUARDIANSHIP & OLDER ADULTS: MYTHS & FACTS

Historically, guardianship has been viewed as a means of protecting an older adult who may have a diagnosis of Alzheimer's or related dementia or other cognitive impairment, 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 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 or supported decision-making agreement.

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. Sometimes, even unintentionally, having a guardian can lead to the person feeling powerless and infantilized, and this can lead to defiant, resistive behavior or attitudes.

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 older adult 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, applying for governmental benefits, end of life care, 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, may be able to get their needs met without court intervention.

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 appointing a health care agent who can ensure necessary services are received. A trusted family member or other support person can talk with the person and medical team about signing a release of information so the supporter can continue to be involved in conversations about medical care.

Myth: A guardian is necessary for a vulnerable adult 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 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.

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 build 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: 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 risks as well as what protections can be implemented to 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 the county for the protection of the vulnerable adult.

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 at
952-945-4174 / 844-333-1748 (toll free)
cesdm@voamn.org

The work of CESDM and WINGS MN is supported in part, by a grant (No. 90EJIG0002-01-00) from the [Administration for Community Living](#), U.S. Department of Health and Human Services (HHS). Grantees carrying out projects under government sponsorship are encouraged to express freely their findings and conclusions. Therefore, points of view or opinions do not necessarily represent official Administration for Community Living or DHHS policy.

11.2018