

Accommodations in Decision-Making

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What is guardianship?

Guardianship is a formal judicial process which gives someone's decision-making authority to someone else. It begins when someone petitions for guardianship over someone else. After a hearing, the judge will issue an order establishing that guardianship is not needed, a full guardianship is needed, or a limited guardianship is needed.

Types of guardianship:

Full guardianship

- Generally, a full guardian has a relationship with his ward as a parent does to a minor child.
- Characterized as “civil death” or “unpersoning” because the individual is stripped of legal capacity and deprived of many constitutional fundamental rights (ex: freedom of association, right to marry, etc.)

Types of guardianship:

- **Limited guardianship**
 - The guardianship order specifies only certain legal powers and duties of a guardian.
 - A person under limited guardianship retains all legal and civil rights except those suspended by the order.
 - Ex: medical guardianship, financial guardianship, residential guardianship, etc.

Types of guardianship:

Private guardian

- Any private person (friend/family member) who is appointed as a guardian

Public guardian

- When the State is appointed as a guardian
 - The State generally assigns someone (usually a case manager) to be the guardianship representative.

When does guardianship happen?

For someone with a developmental disability guardianship is typically considered:

- At age 18
- After a significant event

Why do you think this is?

Standards of guardianship

- The judge will determine whether you are an “incapacitated person”
 - Someone with a disability
 - “Lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person”

The judge will also determine whether the guardianship is necessary or desirable as a means of providing continuing care and supervision

Standards of guardianship

- **The court shall exercise the authority... so as to encourage the development of maximum self reliance and independence of the incapacitated person and make appointive and other orders only to the extent necessitated by the incapacitated person's actual mental and adaptive limitations or other conditions warranting the procedure.**

After an order is made

Most records are public:

- www.maineprobate.net
- For example, guardianship reports are filed annually and may contain sensitive and confidential information

Guardianship and Services

- **Guardians cannot delegate their authority to services paid for through MaineCare**
 - **Rights of Recipients of Mental Health Services**
 - **Rights of Individuals with Intellectual Disabilities or Autism**

- **How can objections be made to the actions of guardians?**
 - **Taken to the Probate Court responsible for guardianship**

Are there any alternatives to Guardianship?

- **Yes!**
- Supported Decision-Making
 - encourages building natural community networks
 - allows for the use of various individualized accommodations
 - Can utilize multiple decision-making models or only specific identified supporters
 - SDM Agreements for individual supporters
 - SDM Agreements for accommodations
 - Powers of Attorney for specific areas of support
 - assistive technology can be helpful

Supported Decision Making – what is it?

- **Supported Decision Making, or SDM, is a recognized alternative to guardianship through which people with disabilities utilize individualized accommodations and collaborate with friends, family members, and professionals to help them understand the situations and choices they face, so they may make their own decisions without the “need” for a guardian.**

Supported Decision Making – how is it used?

- **Through support and accommodations, SDM empowers individuals with disabilities to make life decisions.**
- **Some examples of decision-making areas where SDM can be applied: deciding where an individual wants to live; choosing the services, supports, and medical care they want to receive; identifying whom they want to live with; and exploring where they want to work.**

Decision-Making is a Skill

- Decision-Making is a skill that can be taught, learned, and practiced like any other skill.
- Decision-Making can be accommodated like any other skill.
- If you have any ability to participate in any way in the decision-making process, there is a way to accommodate you!

Decision-Making is a Process

- For a long time, decision-making has been thought of as a linear process which relies on two basic flaws:
 1. There is a right and a wrong answer to every decision
 2. You can either make the right decision or you can't

But decisions are more nuanced than that...

Decision-Making is Collaborative

In one way or another, we all use Supported Decision-Making on a daily basis. None of us make decisions completely on our own.

- Consulting a mechanic on a car repair
- Talking to friends about picking a school
- Talking to family about holiday plans

Some people need more support than others. If you can remember that decision-making is a skill, like any other skill (cooking, cleaning, ADLs), it's not difficult to start brainstorming supports!

Decision-Making Models

Everyone's decision-making process is going to look different and using Supported Decision-Making is individualized to each person

What are some support tools?

- Individual Supporters
- Assistive technology
- Legal relationships, i.e. powers of attorney

Power of Attorney

- A Power of Attorney (POA) can be executed for any type of decision.
- It's a contract granting co-existing decision making power to someone else.
- Notarized and signed by both parties.
- Can be revoked at any time.

Additional management strategies

- Financial and medical:
 - Power of attorney financial
 - Bill payment services
 - Representative payee
 - Special needs trust
 - Power of attorney medical
 - Advance healthcare directives

SDM and Transition

Schools are required to notify parents when their child is approaching the age of majority. This often sparks parents to petition for guardianship of their child to remain a part of the IEP process.

If you are already engaged in a Supported Decision-Making relationship, you do not need guardianship to continue assisting your child in decision-making.

SDM and Accommodations

The Americans with Disabilities Act describes the right to reasonable accommodations:

- “No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.”

Key differences in SDM and Guardianship

Supported Decision Making

- Presumes Capacity
- Least restrictive alternative
- Asks: What does an individual need to be supported in making decisions?
- Acknowledges other practical and legal options that can address challenges and needs

Guardianship

- Protective Device
- Can be extremely restrictive – an individual's powers, rights, and authority are transferred to a surrogate – a process that “unpersons” an individual
- Should be used only as a last resort

SDM and Abuse Prevention

Self-determination is linked with a decrease in abuse and an increase in subjective well-being.

Why do you think this is?

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- Need help with developing a Supported Decision-Making plan?
- Have additional questions?
- Want to know how to take the first step towards utilizing SDM?
- Visit: www.supportmydecision.org,
Maine's SDM website
- Call me at 626-2774 x205

Questions?