

ALTERNATIVES TO GUARDIANSHIP

**Ellen Sugrue Hyman
Attorney at Law**

The Arc Michigan
Michigan Alliance for Families

Summary Statement

- Every person can make choices and has a right to make decisions.
- A legal system or proceeding deprives an individual of her/his right to be accommodated and supported in choosing and making decisions
- Removing a person's rights makes them more vulnerable, not less
- Alternatives to Guardianships support an individual to make choices and live a life that meets his or her needs.

Self-Determination Principles

- **Freedom:** The ability to plan a life, rather than purchase a program
- **Authority:** Ability for a person with a disability to control a certain sum of dollars to purchase supports
- **Support:** Arranging resources and personnel, both formal & informal, to achieve meaningful participation
- **Responsibility:** Acceptance of a valued community role, through employment, affiliations, spiritual development and caring for others, as well as accountability for public dollars

WHY AVOID GUARDIANSHIP?

- Avoid public declaration of incompetency
- Promote independence, dignity, freedom of choice
- People deal with guardian – not person
- Expense – attorneys, hearings, evaluations
- Courts don't always follow law (partial vs. plenary, promote independence, etc.)

WHY AVOID GUARDIANSHIP? (cont'd)

- Very difficult to modify or terminate
- Attorneys and G.A.L.s – very little training
- Corporate guardian problems – take money & independence
- It simply doesn't do what you want it to do!

Common Guardianship Powers

- Custody of the individual
- Assist with placement decisions if necessary
- Provide for the individual's care, comfort and maintenance
- Arrange for person's training, education, medical, psychological, psychosocial, and vocational needs to maximize independence

Alternatives to Guardianship

- Supports & Services
 - Advisors, Advocates
 - Authorizations for Advocacy
 - Person-Centered Planning
- Medical
 - Patient Advocate Designation (Medical & Mental Health Power of Attorney)
 - Living Will
 - Social Welfare Act

Alternatives to Guardianship (cont'd)

- Financial
 - Durable Power of Attorney
 - Representative Payee
 - Personal Money Manager
 - Electric Bill Paying
 - Contracts
 - Protective Orders
 - Trusts

Person Centered Planning

“Person-centered planning’ means a process for planning and supporting the individual receiving services that builds upon the individual’s capacity to engage in activities that promote community life and that honors the individual’s preferences, choices and abilities. MCL 330.1700 (g)

Components of Person Centered Planning

- Person Directed**
- Capacity Building**
- Person Centered**
- Network Building**
- Outcome based**
- Community Accountability**

Supports & Services

- Many people with developmental disabilities or mental illness need publicly funded supports.
- Supports can be obtained through:
 - CMH
 - MRS
 - DHS
 - Voc Rehab
- CMH Services identified through the PCP process

Advisors and Advocates

- Everyone has allies that can help them informally as advocates and advisors
- Allies may be involved in the person-centered planning process or help with other tasks
- The greatest determinant of success for most people with developmental disabilities is the number of unpaid people involved in their lives
- Sample Forms

Patient Advocate Designations (PADs) for Medical Decisions

- Exercisable only in event the person is unable to make their own medical decisions (certified by two physicians)
- Can be individual 18 or over to exercise powers related to care, custody and medical treatment decisions of the person.
- Includes the individual's preferences regarding care and treatment.
- Necessary for withdrawal of life-sustaining treatment.
- New Michigan law also permits PADs for mental health decisions. This is also a preferred alternative to "Kevin's Law" (court-ordered, outpatient treatment).

Living Wills

- Michigan does not have legislation for living wills
- Can be used as “clear and convincing evidence” of an individual’s wishes to have medical treatment withheld or withdrawn as required under Michigan case law for surrogate decision-making

Michigan Social Welfare Act MCL 400.66h

- Affirms a person's right to provide consent to treatment and have wishes followed when receiving government assistance (i.e., Medicaid).
- If the individual is unable to make medical decisions, then providers are required to obtain written consent of individual's nearest relative, guardian or parent except in emergencies.

Durable Power of Attorney

- A power of attorney is a written document where a person, called a principal, delegates and authorizes an agent to handle their finances, property and business matters

When is a Power of Attorney Valid?

- A power of attorney is valid only if the person signing understands the nature and importance of the document

Responsibilities of the Agent

- Required to keep the principal's money separate from the agent's money
- Required to use the money for the principal's best interests

Types of POAs

- Specific
 - to handle one type of business or one transactions
- General
 - to handle all financial transactions and business
- Durable
 - specifically states that will last through a person's incapacity

Representative Payee

- A representative payee is a person or organization designated through the Social Security Administration to handle a person's Social Security check
- SSA has special paperwork and procedures for appointing a representative payee
- Can be changed or revoked only if SSA consents

Personal Money Manager

– Personal Money Managers are individuals or organizations that can handle finances for an individuals.

Services include:

- Paying bills
- Managing finances
- Handling Investments
- Troubleshooting

Automatic Bill Paying

- Automatic bill payment can be set up for an individual
- Eliminates the ongoing need for bill payment assistance
- Periodic monitoring is helpful

Limited Bank Accounts

- Co-signers/Joint Account
- Ceiling Limit Account
- Pour-Over Account

Contracts

- In order for the contract to be valid, parties to the contract must have capacity to sign a contract
- Higher level of capacity is required than capacity to execute a POA
- If someone without capacity signs a contract, it is voidable

Protective Orders

- To complete a single financial transaction (such as funding a trust), a protective order can be sought from the probate court
- Less intrusive than guardianship
- Limits court involvement

Trusts

- A Trust is like a contract
- *Grantor* (owner of property) transfers property to a Trust, including real estate, bank accounts, stocks & bonds
- The Trust assets are administered by a *Trustee*
- *Trustee* must manage the assets and to make expenditures for the designated trust *Beneficiary* in accordance with the trust document.

Advantages of Trusts

- Allows you to provide for yourself (if you become incapacitated) and for your loved ones (after your death)
- Gives you maximum control of your assets and your decisions
- Keeps your wishes regarding assets private
- Minimizes taxes relating to transfers
- Avoids probate after death

Types of Trusts for Persons with Disabilities

- Support Trust
- Third Party Trusts (also referred to as “amenities trust”)
- Pay-back Trusts (also referred to as “self settled”)
- Pooled Accounts Trust

Support Trust

- Provides for support, care and maintenance of the beneficiary
- Can be created and funded by anyone including beneficiary
- Does **not** preserve eligibility for government benefits (e.g., Medicaid, SSI)
- Typically established by family members for individuals with special needs who do not need government benefits

Third-Party (Amenities) Trust

- Established and funded with assets of a third party (e.g. family member)
- Provides for amenities or extra items or services only (e.g., advocacy, recreational activities, home furnishings, haircuts, music therapy)
- If properly written, preserves beneficiary's eligibility for government benefits

Pay Back (Self-Settled) Trusts

- Established by a family member or designated individual with trust powers
- Funded with the Beneficiary's own funds (e.g., funds awarded from lawsuit)
- To provide for amenities or extra items to promote quality of life and independence
- Primarily used to preserve government benefits
- Requires language in the trust that upon the death of the individual, the State is paid back **first** for any government benefits paid during his/her lifetime before distributing rest of trust assets to anyone else

Trust can be used for:

- Medical treatment beyond Medicaid
- Dental Care
- Educational or Vocational services
- Recreation expenses or outings
- Travel for beneficiary or siblings, etc.
- Books, magazines, cable television
- Monitoring expenses
- Non-standard or non-covered personal services
- Can purchase home & rent to beneficiary with or without roommates (payments must cover total cost of home)
- Can make the difference between success & failure of a placement
- Favors consumer choice & inclusion

Pooled Accounts Trust

- Used to preserve government benefits
- Established and administered by a non-profit organization
- Sub-accounts are established for the benefit of the individual
- Remaining assets at death is left with charity, or
- Pay back the State before distributing remainder to others

Additional Resources for Alternatives to Guardianship

- Social Security www.ssa.gov
- State Bar of Michigan
www.michbar.org/generalinfo/libraries/selfhelp.cfm
- Five Wishes
www.agingwithdignity.org/5wishes.html
- Bazelon Center for Mental Health Law www.bazelon.org

Caution Against Standard Forms

- Standard estate planning forms are helpful to those who cannot afford an attorney
- However, the forms may not be suitable based on your individual circumstances
- The forms may not have the necessary language to protect government benefits
- Michigan has its own special requirements for valid documents
- Therefore, the authors do **not** recommend the use of standard forms without consulting an attorney first!!

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