

Rethinking Guardianship



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When does the
question regarding
legal
authority/support
occur?



There is no law, rule, policy or requirement that an individual with a disability have a legal guardian.

What is Guardianship?

Involuntary legal process through the probate court

Guardianship of an individual with a Developmental Disability is dictated by the Michigan Mental Health Code.

Partial guardianship is preferred for those with I/DD

Court defines powers

Court appoints guardian

Expires after 5 years

Must file a petition to modify or terminate

Mental Health Code

For persons with developmental disabilities, guardianship and alternatives to guardianship are dictated by Chapter 6 of the Michigan Mental Health Code (MCL 330.1600 through MCL 330.1644)



Estates and Protected Individuals Code

For persons with
persistent and severe
mental illness and
persons of age, the
Estates and Protected
Individuals Code dictates
guardianship and the
alternatives.



Least Restrictive

Regardless whether one uses an EPIC or MHC standard, both laws and subsequent case law support, require and recommend the use of the least restrictive legal designation.



Poor Choices
v.
Inability to
Chose

Poor Choices ≠
incapacitated

Right to make
bad decisions

The law presumes
capacity!

Levels of support

Nothing! Law of natural consequences (live and learn!)

Circle of Support – family, friends, trusted individuals

Verbal consent and signed releases, authorized user

Joint bank account and Representative Payee

Power of Attorney and Patient Advocate

Guardianship



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Representative
Payee



Social Security Administration may appoint someone else (family member, friend, or qualified organization) to manage an individual's cash benefit if it is determined that the individual is unable to manage their finances.

- ❖ Must apply separately to become Rep Payee (even if you are the guardian)
- ❖ SSA requires documentation that individual is unable to manage funds.
- ❖ If beneficiary is working, Rep Payee is RESPONSIBLE for reporting income!
- ❖ Must create a Representative Payee account with the bank



What is a power of attorney?

Document that allows you to give someone the authority to manage a person's affairs.

Person assigned to manage affairs is an agent.

Voluntary.

Can be changed.

Scope is defined by the document, i.e., legal, financial, medical, contractual, etc.

Outside of the court process.

What creates a Power of Attorney?

Signed, witnessed by two individuals and notarized.

“Sound mind” – sufficient mental capacity to understand their actions.

Consent is whether a person knows what right he has and that he wants someone else to have the ability to use that right.

Agent must sign an acknowledgment of responsibilities.

Agent

Someone you trust.

Can be a list of people, or more than one person at a time.

Must follow your instructions to the best of your ability.

Must act in your best interest.

Keep good records, whether they are financial, medical, etc.

Patient Advocate

- Medical
- End of life



THANK YOU!!

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