

**DISABILITY RIGHTS**  
NORTH CAROLINA

*Champions for Equality and Justice*



# Alternatives to Guardianship

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# Who we are...

- Disability Rights NC is NC's leading authority on the legal rights of people with disabilities.
- We are the state's Protection and Advocacy system.
- We have certain authority from federal law.
- We provide legal advocacy.

# Use of Guardianship

Guardianship may be appropriate in limited circumstances where a guardian will afford the individual **fuller** capacity for exercising his or her rights.

- Individual is allowed the possibility of error to the same degree as is allowed to competent persons, and is permitted to participate as fully as possible in all decisions.
- Guardianship is as limited and as individualized as possible, and seeks to preserve the opportunity for the person to retain all those rights that are within his or her comprehension and judgment.

# Concerns About Guardianship

- Our Law Does NOT:
  - Provide oversight of Guardians of the Person.
  - Require training or cultural competence of Guardians.
  - Require the Clerk or the Guardian to re-evaluate an individual's capacity.
  - Provide a dedicated, easily accessible source of payment for Multidisciplinary Evaluations.
- Additionally:
  - Limited Guardianships are under-utilized.
  - Removal of a public guardian is difficult.

# Case Examples

# ALTERNATIVES TO GUARDIANSHIP



# Alternatives to Guardianship

## Assistance with finances:

- Social Security Representative Payee
- Special Bank Account
- Special Needs Trust

## Assistance with care/independent living:

- Home Health Care
- Supportive Housing
- Health Care Power of Attorney\*
- Advance Instruction for Mental Health Treatment\*
- Living Will\*

## Assistance with life decisions:

- Power of Attorney\*

# Representative Payee



- Social Security Agency (SSA) selects a person or organization to receive and manage benefits on behalf of a beneficiary who is legally incompetent or whom SSA determines is not capable of managing benefits.
- Main responsibilities of the rep payee are to (i) use the benefits to pay for current and foreseeable needs of the beneficiary; (ii) save any benefits not needed to meet current needs; (iii) keep records of expenses; and (iv) provide SSA with an accounting.
- Must be approved by SSA to be rep payee.  
(≠ Power of Atty)



# Special Bank Account



- A variety of arrangements can be made.
- Personal banker can discuss options.

# Special Needs Trust



- A trust designed to hold funds for the benefit of a person with a disability.
- Typically useful when a person with a disability receives a large, lump sum of money that will impact his or her eligibility for Medicaid or other lifeline benefits.

# Home Health Care



- Home health agencies can assist with activities of daily living such as bathing, dressing, cooking, and cleaning and can support someone in the community if the person can make decisions about their care.

# Supportive Housing



- Permanent housing with services. The type of services depends on the needs of the residents. The housing is usually “affordable” (intended to serve persons on an SSI income).
- Supportive Services: services such as case management, medical or psychological counseling and supervision, child care, transportation and job training provided for the purpose of facilitating the independence of residents.

(definitions from NC Housing Coalition glossary of terms)

# Health Care Power of Attorney\*



- Allows the person designated as POA to make health care decisions in the event of incapacity.
- The appointment of a guardian terminates a health care power of attorney for the ward.
- You may nominate someone in POA document to be your guardian in the event you are later adjudicated incompetent.

# Advance Instruction for MH Treatment\*



- Also known as a “Psychiatric Advanced Directive”
- Allows a person to give instructions and preferences regarding mental health treatment, and to appoint an agent to make these decisions if they become incompetent.

# Living Will\*



- Declaration that person desires to die a natural death under certain circumstances. A living will gives medical professionals permission to withhold or withdraw life support systems under certain conditions.

# Power of Attorney\*



- Person grants authority to the attorney-in-fact to handle some or all affairs. The POA may grant authority regarding one transaction or the authority to handle most of the person's personal and financial matters.
- The POA can:
  - Be effective immediately, or
  - Springing (i.e., at a point in the future, if a person becomes unable to handle their affairs, either temporarily or permanently), or
  - Durable, meaning it survives incapacity, and remains in effect even if a guardian is appointed.



# Supported Decision

## Making Agreement adapted from First in Families

- Agreement between a person with a disability and a network of supporters.
- The Agreement:
  - Is based on the interests and needs of the person with a disability.
  - Gives written guidance to network participants.
  - Is designed to help the individual make a decision, not to make it for them.
  - Can cover financial, health, and/or daily living needs.
  - Voluntary and revocable.

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