



The Arc[™]

Arapahoe & Douglas Counties

Step Up! Into Life after High School Session 7

Supported Decision Making

FOR PEOPLE WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES

Achieve with us.

Lee Ray

Advocate for Adults

- Lee works primarily with adults with disabilities.
- Lee Ray has been an advocate with The Arc Arapahoe & Douglas Counties for over 20 years.
- Prior to his tenure with The Arc, his career experience consisted of a decade in residential services, providing family support during the early years of Supported Living Services (SLS), and at a state run facility in Texas.
- During his career, Lee has witnessed the transition and steady progression of the quality of life options for individuals with disabilities. Advocating during a time when people with disabilities were limited to highly restrictive settings and now currently assisting people in creating lives of independence and worth.
- Lee acts as guardian... for nine individuals he has known since the early 90's.

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Olmstead v. U.S., 277 U.S. 438 (1928)

“Experience should teach us to be most on our guard to protect liberty when the Government’s purposes are beneficent... The great dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding.”

- Olmstead v. U.S., 277 U.S. 438 (1928)

Disclaimer

- I am not a lawyer.
- The Arc Arapahoe & Douglas Counties provides information to people on supported decision making/guardianship and alternatives as an educational service.
- We make no guarantees, but merely share our knowledge and experience.
- I encourage you to seek legal counsel for questions and/or problems encountered in the process.

Further Disclaimer

- There are a wide variety of individuals and levels of needed supports in the community we support.
- Some of what I present you may feel doesn't apply to your situation or family member, but it will apply for some here and may apply for you in the future.
- There is also a lot of information to cover and not a lot of time.
- As always if there are specifics related to your situation please catch one of us after the presentation.

Further, Further Disclaimer

- I am an advocate for adults with intellectual/developmental disabilities. I serve them.
 - That means I value and support and promote:
 - Self determination
 - Safeguarding human rights
 - Person centered planning
 - Dignity of risk
 - Least restrictive level of support that will work

Because of these values WE
at The Arc Arapahoe &
Douglas

Counties believe
guardianship should always
be a last resort

What You Will Learn

- Supported Decision Making
- Power of Attorney
- How to support Medical Decisions
 - Basic HIPPA releases
 - Medical Durable power of Attorney
 - Medical Proxy
 - Advanced Directives
- How to support Financial Decisions
 - Conservatorship
 - Authorized Representative

When an Individual has a Guardian

“The typical ward (individual) has fewer rights than the typical convicted felon... By appointing a guardian, the court entrusts to someone else the power to choose where they will live, what medical treatment they will get, and in rare cases, when they will die. It is, in one short sentence, the most punitive civil penalty that can be levied against an American citizen.”

- House Select Committee on Aging
 - H.R. Rpt 100-641
- (opening statement of Chairman Claude Pepper)

Supported Decision Making

- When you are confronted with a decision, especially when you are unfamiliar with some of the issue, like taxes or medical or automotive, what do you do?
- You ask a friend, parent, family member, or expert.
- You get help when you need it...
- Supported decision making is empowering individuals with disabilities to get the support they need to make decisions.

Supported Decision Making

In a recent presentation from the Quality Trust for Individuals with Disabilities, Jonathan Martinis described Supported Decision Making as “a recognized alternative to guardianship through which people with disabilities use friends, family members and professionals to help them understand the situations and choices they face, so they make their own decisions without the “need” for a guardian” (Blank & Martinis, 2015).

Supported Decision Making

Jonathan Martinis presented some interesting facts about guardianship in a 2016 presentation in Colorado:

- People under guardianship can experience a “significant negative impact on their physical and mental health, longevity, ability to function, and reports of subjective well-being” (Wright, 2010).
- People with disabilities who exercise greater self determination have a better quality of life, more independence, and more community integration. (Powers et al., 2012; Shogren, Wehmeyer, Palmer, Rifenshark, & Little, 2014; Wehmeyer and Schwartz, 1997; Wehman & Palmer, 2003).

How to decide if guardianship is necessary?

As a starting point, what kinds of decisions will need to be made?

- Financial
- Medical
- Services & Supports

How to decide if guardianship is necessary?

Alternatives

Medical Decisions



HIPPA releases
Medical Durable Power of Attorney
Medical Proxy

Financial Decisions



Representative Payee
Conservatorship
Power of Attorney
Special Needs Trust

Services & Supports
Decisions



Power of Attorney
Authorized Representative

Power of Attorney

- Legal authorization granting another person (agent) to make decisions on behalf of another individual (principal) regarding property, financial and/or medical matters. The individual must have the capacity to appoint an agent to make decisions on his/her behalf.
- Not a court action – rather a voluntary appointment made by the individual
- Legally binding
- Can be limited in any way person wants – specifically medical or specifically financial etc.
- Notarize signature
- Renew annually

Responsibilities

- Act in the person's best interest
- Act in "good faith" – be honest
- Act only in the scope of authority
- Avoid conflicts of interest
- Keep records
- Communicates needs with other agents

Limitations

- Communicates needs with other agents
- Only act along with person as authorized
- Power of Attorney can be revoked at anytime

Power of Attorney

- Examples of language can be found at:
<http://www.cobra.org/portals/cobra/repository/SLH/chap23.pdf>
- The National Uniform Power of Attorney Act

How to decide if guardianship is necessary?

Alternatives

Medical Decisions



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Financial Decisions



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Special Needs Trust

Services & Supports
Decisions



Power of Attorney
Authorized Representative

How to support Medical Decisions

- HIPPA releases
- Medical Durable Power of Attorney
- Medical Proxy
- Advanced Directives

HIPPA releases

- Assumes the ability to communicate choice
- Names a specific individual to receive health related information
- Information only, not ability to make decisions
- Renew annually

Medical Durable Power of Attorney

- Assumes the ability to communicate choice
- MDPOA names an agent to make medical decisions and back-up agents if the first is unavailable
- Allows for details on person's wishes for care, similar to advance directives (agent must abide by those wishes)
- Signature is witnessed by independent parties and preferably notarized
- Renew annually

Medical Proxy

- Assumes the inability to communicate choice (as determined by doctor)
- Can be used in an emergency
- Family and friends agree on a substitute decision maker if no advance directives, guardianship or MDPOA in place
- Court approval is not necessary unless disputed by interested parties

A written statement of a person's wishes regarding medical treatment to ensure those wishes are carried out should the person become unable to communicate them to a doctor.

- Living Will
- CPR Directive
- Medical Orders for Scope of Treatment (MOST)
- Five Wishes
- Do Not Resuscitate Order (DNR)

- Conservatorship
- Power of Attorney
- Representative Payee
- Special Needs Trusts

Conservatorship

- If person has more assets than necessary to provide for daily needs – real estate etc.
- A court appointed position - specifically to manage the financial affairs of another
- If you are related can be both conservator and guardian
- Must complete inventory, financial plan and reports to court
- Must act under “Prudent Man Rule”

Financial Power of Attorney

- Legal authorization granting another person (agent) to make financial decisions on behalf of another individual (principal) regarding financial matters. The individual must have the capacity to appoint an agent to make decisions on his/her behalf.
- Not a court action – rather a voluntary appointment made by the individual
- Legally binding
- Can be limited in any way person wants –specifically financial or to an extent that is unique to the individuals needs.
- Notarize signature
- Renew annually

Authorized Representative

- Only recognized in the I/DD system
- Person Receiving Services or Guardian can designate
- Can be friend, family, advocate, lawyer, etc.
- Can assist with information, meetings, appealing decisions, etc.
- Only the person, guardian, or POA can make decisions and legally give consent
- Form must name the Authorized Representative, specific involvement, signature, date, witness and signature of Authorized Representative accepting the designation

Questions





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