



POSITION STATEMENT ON GUARDIANSHIP, SURROGATE DECISION MAKING, AND SUPPORTED DECISION MAKING

BACKGROUND:

Current trends in guardianship, nationally and internationally, are leading public policy makers, disability rights advocates, courts, guardians, and other guardianship stakeholders to consider supported decision making (SDM) as an alternative to guardianship and as a decision-making paradigm within the framework of future nationally recognized best practices for assisting persons with cognitive disabilities. The National Resource Center for Supported Decision Making describes supported decision making as:

...where people use trusted friends, family members, and professionals to help them understand the situations and choices they face, so they may make their own decisions - is a means for increasing self-determination by encouraging and empowering people to make their own decisions about the their lives to the maximum extent possible.

The effectiveness of SDM as a widespread, viable alternative to guardianship is promising but it is still subject to much debate and research; however, the concepts behind it and the motivation to provide for a guardianship system and surrogate decision-making paradigms that move our society away from paternal protection of persons with cognitive disabilities to assistance for, and in partnership with, persons with cognitive disabilities are consistent with the direction of guardianship reform. The need to provide assistance when needed, prevent abuse and undue influence, and respect individual rights is recognized and generally accepted by all stakeholders.

The National Guardianship Association (NGA) has advocated for the use of person-centered decision making for years and has incorporated person-first language and person-centered decision making and planning concepts into the NGA Standards of Practice. NGA began advocating for the use of the "best interest" principle of decision making only as a last resort for surrogate decision making over two decades ago. Modern day respect for individual rights dictates that we must allow each individual to make or participate to the extent possible in personal decisions. Therefore, incorporation of SDM into guardianship standards is essential to evolving practice.

OUR POSITION:

The National Guardianship Association supports ongoing research to determine the effectiveness of supported decision-making models as alternatives to guardianship.

Guardianship should be utilized only when lesser restrictive supports are not available. Alternatives to guardianship, including supported decision making, should always be identified and considered whenever possible prior to the commencement of guardianship proceedings.

Whenever guardianship is necessary to assist a person, the guardianship must be limited, allow the maximum retention of individual rights, and be customized to the individual needs of the person under guardianship.

NGA supports policies that help maximize the participation of the person and provide the person under guardianship with every opportunity to exercise those individual rights that the person might be capable of exercising.

Under all circumstances, efforts should be made to encourage every person under guardianship to exercise his/her individual rights retained and participate, to the maximum extent of the person's abilities, in all decisions that affect him or her, to act on his or her own behalf in all matters in which the person is able to do so, and to develop or regain his or her own capacity to the maximum extent possible.

Supported decision making should be considered for the person before guardianship, and the supported decision-making process should be incorporated as a part of the guardianship if guardianship is necessary.

Supported decision making has been described as occurring when an individual with cognitive challenges is the ultimate decision maker but is provided support from one or more persons who explain issues to the individual and, where necessary, interpret the individual's words and behavior to determine his or her goals and preferences.

Every guardianship should be focused on the person and grounded in demonstrating respect for the dignity of all involved.

A guardian must understand and protect the rights of the person and utilize all the tools available to maximize the participation of the person and enable self-determination.