GUARDIANSHIP DEFLECTION AND RIGHTS RESTORATION USING SUPPORTED DECISION-MAKING

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GEORGIA ADVOCACY OFFICE

- GAO is the Independent, Federally Mandated Protection and Advocacy System for People with Disabilities in Georgia.
- GAO envisions a Georgia where all people have value, visibility, and voice; where even the most difficult and long-lasting challenges are addressed by ordinary citizens acting voluntarily on behalf of each other; and where the perception of disability is replaced by the recognition of ability.
SELF ADVOCACY RESOURCE & TECHNICAL ASSISTANCE CENTER (SARTAC)

- The mission of Self Advocacy Resource and Technical Assistance Center (SARTAC) is to strengthen the self-advocacy movement by supporting self-advocacy organizations to grow in diversity and leadership.
- SARTAC provides technical assistance on many self-advocacy topics. Technical assistance is available by email, phone or video conference. In-person support may be available if funding is available.
- SARTAC Fellowships offer a year-long opportunity for self-advocates to develop and grow their skills as leaders in the self-advocacy movement by working with host organizations on a project or policy issue.

GEORGIA DIVISION OF AGING SERVICES

Vision
Living longer, Living safely, Living well

Mission
The Georgia Department of Human Services (DHS) Division of Aging Services (DAS) supports the larger goals of DHS by assisting older individuals, at-risk adults, persons with disabilities and their families and caregivers to achieve safe, healthy, independent and self-reliant lives.
OBJECTIVES

Identify
Identify signs that indicate an unmet support need in potential guardianship cases.

List
List three opportunities in your current practice or process to evaluate how SDM or other alternatives could meet a person’s needs and avoid guardianship.

Describe
Describe the benefits of using SDM in restoration of rights and/or termination of guardianship cases.

OVERVIEW

A New Way of Thinking
PRACTICAL Tool
Avoiding Guardianship
Pursuing Restoration
Utilizing Alternatives
### OLD WAY vs NEW WAY

- Based on diagnosis
- Incapacity is total
- Capacity is static
- Paternalistic/Safety at any cost
- Based on fears and stereotypes

“Capacity assessments should primarily be undertaken not to judge whether people are capable to decide ‘autonomously’ but rather to assess what kind of support people with decision-making disabilities need in order to be involved in decision-making and thus to promote their autonomy.”

(Pesiah et al, 2013)

### NATIONAL GUARDIANSHIP ASSOCIATION POSITION STATEMENT

- Alternatives to guardianship, including supported decision-making, should always be identified and considered…prior to the commencement of guardianship proceedings.
- 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 in all decisions that affect him or her, to act on his or her own behalf in all matters,…and to develop or regain his or her own capacity.
- The supported decision-making process should be incorporated as a part of the guardianship...
RECOMMENDATIONS OF THE FOURTH NATIONAL GUARDIANSHIP SUMMIT

- Rights-Based Guardianships - Enhancing Rights of Persons Subject to Guardianship
  - Bill of rights
  - Due Process
  - Access to Restoration
- Supported Decision-Making
- Require Limited Guardianship, Protective Arrangements and Diverting Pipelines
- Rethinking Guardianship Monitoring and Addressing Abuse
- Addressing Fiduciary Responsibilities and Tensions
- Guardianship Court Improvement Programs

LOOK FOR OFF RAMPS

- Initial Question/First Meeting
- Petition
- Evaluation
- Hearing
- After Guardianship is Ordered
GUIDEPOSTS: GEORGIA’S STATUTE

- ‘All guardianships ordered pursuant to this chapter shall be designed to encourage the development of maximum self-reliance and independence in the adult and shall be ordered only to the extent necessitated by the adult’s actual and adaptive limitations after a determination that less restrictive alternatives to the guardianship are not available or appropriate.’

- The person retains the right to bring an action relating to the guardianship.

- ‘In every guardianship, the person has the right to…be restored to capacity at the earliest possible time.’

FIRST STEPS

- Ask Why
- Right-by-Right or Skill by Skill
  - How do you exercise this right?
  - What support do you need to exercise this right?
- 360 Evaluation
- What support is currently available
BE PRACTICAL

- **PRESUME** guardianship is not needed.
- **REASON.** Clearly identify the reasons for concern.
- **ASK** if a triggering concern may be caused by temporary or reversible conditions.
- **COMMUNITY.** Can concerns be addressed by connecting to resources and making accommodations.
- **TEAM.** Ask the person whether he or she already has developed a team to help make decisions.
- **IDENTIFY** abilities. Identify areas of strengths and limitations in decision-making.
- **CHALLENGES.** Screen for and address challenges presented by the identified supports and supporters.
- **APPOINT** legal supporter or surrogate consistent with person’s values and preferences.
- **LIMIT** any necessary guardianship petition and order.

LIMIT ANY NECESSARY GUARDIANSHIP PETITION AND ORDER.

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<th>Be Creative</th>
<th>Use limited or special orders instead of guardianship if possible.</th>
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<td>Leave Rights Intact</td>
<td>If alternatives are not available or appropriate, ask the Court the limit the order, leaving as many rights un-effected as possible.</td>
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<td>Promote SDM</td>
<td>Instruct guardians to practice person centered and person driven principles by always informing the person, offering options, recommendations, and asking the person’s preference.</td>
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PURSUING RESTORATION

- Why was the guardianship filed?
- How have things changed?
- What didn’t the court consider before?
- Who supports the restoration? Who opposes it? Why?
- Who benefits from the restoration?

RESTORATION IN GEORGIA'S PUBLIC GUARDIANSHIP

- Georgia Department of Human Services is appointed Guardian of Last Resort
  - Case managers are assigned to advocate, coordinate, monitor and provide services
  - Case managers continually assess the person’s needs, explore whether guardianship needs to continue or if a Successor Guardian is available

- Case Manager notifies supervisor, district manager and section manager when it is determined a client should be restored
RESTORATION IN GEORGIA'S PUBLIC GUARDIANSHIP CONT’D

A meeting is held with the client and section manager
- The reason for the appointment of a guardian is reviewed
- What progress has been made since the appointment
- What Activities of Daily Living (ADLs) can the client perform with or without assistance
- Those opposing the restoration
- The plan for support if restoration is granted
- Discuss the next step for the restoration process

PETITION

- Affidavits of Support
  - Guardian
  - Teacher
  - Therapist
  - Employer
- Expert Affidavit explaining/validating SDM
- Annual Physician Evaluation
- Resume/References
- Job Performance Evaluations
EVALUATION

- Initial court order for guardianship
  - Refute each point Ex. “safety” “general health”
  - Develop a plan that addresses each area of need
- Instruments sometimes used by the courts – Review these with petitioner
  - The Lawton Instrumental Activities of Daily Living (IADL) Scale
  - Mini-Mental State Examination (MMSE)
  - Saint Louis University Mental Status Exam
  - Mini-COG

EVALUATION CONTINUED

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<th>Attend</th>
<th>Determine</th>
<th>Identify</th>
<th>Prepare</th>
<th>Distinguish</th>
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<td>Attend the evaluation with the petitioner</td>
<td>Determine skills to highlight and practice those answers</td>
<td>Identify areas where the person needs little to no support</td>
<td>Be prepared to identify the supports available for areas of greater need</td>
<td>Clearly distinguish needing support from needing someone to make decisions.</td>
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HEARING

Help the petitioner understand what to expect in court. Who will be present, their names, and the variety of roles. Practice addressing the judge (your honor) staying calm and asking for help if needed.

Prepare for as many questions as possible, both from the petitioner's attorney and the judge and opposing counsel.

Prepare witnesses and specialists, consider adding experts if the court evaluation was insufficient.

NEXT STEPS:
USING SDM TO BOLSTER DECISION MAKING SKILLS
ALTERNATIVES TO GUARDIANSHIP

Person Makes Own Decisions

Supported Decision-Making
  Powers of Attorney
  Advance Directives
  Medical Proxy / Surrogate
  Representative Payee
  Guardianship

Changeable, Person Directs, Limited

Less Rights

More Rights

Permanent & Total

SUPPORTED DECISION-MAKING

- Supports and services that help a person make their own decisions, by using friends, family members, professionals, and other people they trust to:
  - Help understand the issues and choices;
  - Ask questions;
  - Receive explanations in language they understand; and
  - Communicate their wishes to others.

(See, e.g., Blanck & Martinis 2015; Dinerstein 2012; Salzman 2011)
SUPPORTED DECISION-MAKING CAN HELP DETERMINE WHEN & HOW

When do I need Support?
- Budgeting
- Health care
- Living arrangements
- Choosing supporters

Strategies for Support
- Understand information
- Focus attention in decision-making
- Identify options and choices
- Ensure that decisions are based on the person’s own preferences
- Interpret and/or communicate decisions to other parties

(Salzman, 2011)

SUPPORTED DECISION-MAKING AGREEMENTS

- Written agreements can be as formal or informal as necessary
- Used to clarify roles and expectations
- Provide a reference and model
- Variety of samples available
SUPPORTED DECISION-MAKING:
PRACTICAL STEPS FOR PROFESSIONALS

- Identify the person with a disability as the decision maker
- Look for/create opportunities to teach decision-making skills
- Offer opportunities to practice and safe failing
- Make decisions accessible
- Communicate with decision maker and those who know them well
- Use a strengths/asset-based approach
- Connect with resources in your state; DD Council, P & A, or WINGS Groups

MAKE YOUR PROCESS ACCESSIBLE

- Make the choices clear
- Use Plain language, avoid jargon
- Provide materials in a variety of formats
- Offer visits and trials, observe people in their element
- Give tasks and information in discrete segments
- Involve supporters but speak directly to the person and value their contributions
IMPACT OF SUPPORTED DECISION-MAKING

- **Increases Self-Determination**
  - Life control — People’s ability and opportunity to be “causal agents . . . Actors in their lives instead of being acted upon”
    (Wehmeyer, Palmer, Agran, Mithaug, & Martin, 2000, p. 440)

- **People with greater self-determination are:**
  - More independent
  - More integrated into their communities
  - Healthier
  - Better able to recognize and resist abuse
  (Powers et al., 2012; Shogren, Wehmeyer, Palmer, Rifenbark, & Little 2014; Wehmeyer & Swartz, 1997 & 1998; Wehmeyer & Palmer, 2003; Khemka, Hickson & Reynolds 2003; Wehmeyer, Kelchner, & Reynolds 1996)
RESOURCES

National Resource Center on Supported Decision-Making
- www.supporteddecisionmaking.org
SARTAC Supported Decision-Making & Guardianship Termination:
- https://www.selfadvocacyinfo.org/resource/supported-decision-making-and-guardianship-termination/
American Bar Association Guardianship & Supported Decision-Making
- https://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice/
PRACTICAL Tool for Lawyers
- https://www.americanbar.org/content/dam/aba/medical/administrative/law_aging/PRACTICALGuide.pdf
4th National Guardianship Summit Recommendations
- http://law.syr.edu/academics/conferences-symposia/the-fourth-national-guardianship-summit-autonomy-and-accountability

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