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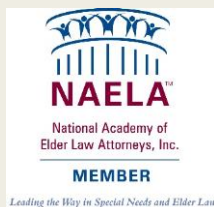
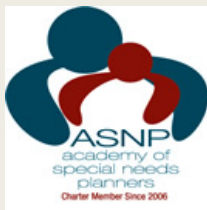
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GUARDIANSHIP: WHAT YOU NEED TO KNOW

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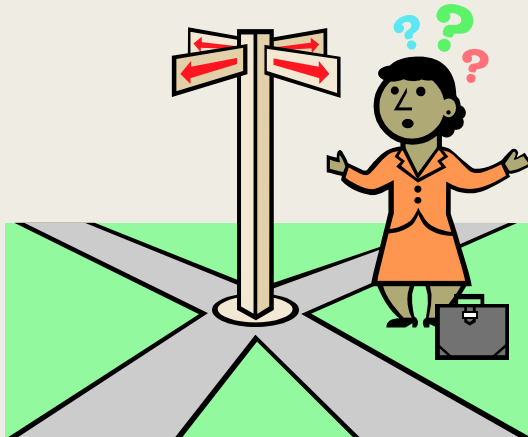


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What We Will Cover

- What is a Guardianship
- When is Guardianship appropriate
- How to become a Guardian
- Alternatives to Guardianship



Role of Parents



- ❖ Parents of children under 18 are considered “natural” guardians of their children
- ❖ Parents of children 18 or older are no longer considered guardians unless appointed legal guardians by the court

What is Guardianship?

- Legal authority to make decisions for another person and manage his/her affairs
- Guardianship is established through a court proceeding
- A developmental disability or mental illness is not, by itself, a sufficient reason for the court to rule that a person is incapacitated
- Court must find that the individual is substantially unable to provide for his or her physical, emotional, medical and residential needs because of the cognitive disability.
- Guardianship can be of the person, property or both

Disability ≠ Incapacity

Impact on Individual Rights

- Person (the ward) loses legal rights and the ability to make many or all of his/her own decisions, such as:
 - *Where to live*
 - *Manage property, such as bank accounts*
 - *Ability to enter into contracts*
 - *Consent to medical treatments*

Guardian's role is to assist the ward in achieving the maximum self-reliance and independence possible.

Types of Guardianships

Full Guardianship

- Guardian is given all rights of decision-making on behalf of the ward
- Can be guardian of the person, property or both

Limited Guardianship

- Guardianship Order will specifically identify the powers of the Guardian
- Ward retains decision-making authority for all other matters

Title 3B Guardianship Process

- Need 2 Medical Affidavits:
 - 2 NJ licensed physicians
 - or*
 - 1 NJ licensed physician and
1 NJ licensed clinical psychologist
- Must file petition within 30 days of 1st doctor visit
- Court-appointed attorney interviews family
- Court hearing and decision

Title 30 Guardianship Process

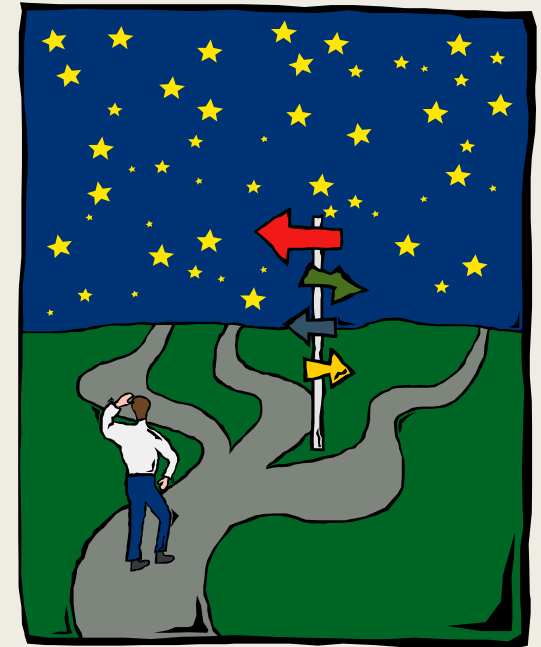
- Enrolled in Division of Developmental Disabilities (DDD)
- Required Documentation
 - Affidavit of NJ licensed physician or NJ licensed clinical psychologist
and 1 of the following:
 - Certification from School District personnel with copy of latest IEP
 - Certification in Support of the Guardianship from a person with knowledge of functional capacity
 - Administrator of the DDD program
 - Another physician or psychologist
 - Licensed-care professional
- Must file petition within 180 days of 1st doctor visit

Guardian Duties & Responsibilities

- Annual reports to the court
- Personal visits
- Promote autonomy and independence while protecting from harm
- Promote self-determination by having the ward participate in decision-making
- Help achieve ward's goals, have needed supports & respect ward's wishes and preferences

Guardianship Alternatives

- Financial Power of Attorney
- Advanced Directive for Healthcare
- Representative Payee for Social Security Benefits
- Trustee for a Special Needs Trust



Durable Financial Power of Attorney

- One person (principal) gives another (agent) power to make financial decisions on the principal's behalf
- Principal must have capacity to understand the benefits, risks and effect of signing the document
- Agent is also called an "Attorney in Fact"
- Durable POA remains in effect even if the Principal becomes incapacitated
- Principal can be changed or revoke POA at any time
- POA ends on Principal's death

Advance Healthcare Directive

Written instructions which guide healthcare decisions when an individual is terminally ill or incapacitated and unable to communicate his/her desires.

Can be changed at any time

Part 1

Health Care Representative



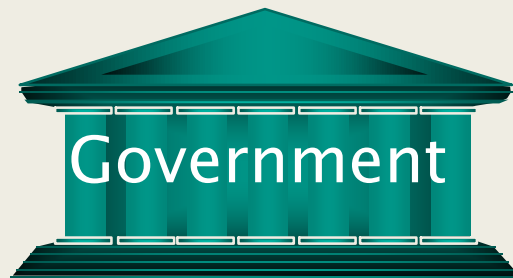
Part 2

Advance Directive
(Living Will)



Social Security Representative Payee

- Person appointed by Social Security to manage benefit payments for an individual to make sure the individual's needs are met
- Parent, legal guardian, spouse, family member or friend can be apply for appointment
- Payee must keep records on how payments are saved or spent.



Trustee for a Special Needs Trust

- A way to set aside funds for person without jeopardizing governmental benefits
- Grantor – person who sets up trust
Trustee – person who manages the trust assets
Beneficiary – person who the trust is created for
- Beneficiary does not have direct access to or control over the trust assets
- Trust assets are protected from creditors
- Trust assets are used to supplement government benefits
- Trust can be set up while doing your own estate plan

Types of Special Needs Trusts

First Party Trusts

- Established by person, family member or court
- Funded with assets originally held by the beneficiary
- Has required Medicaid payback provision upon beneficiary's death

Third Party Trusts

- Established by family member
- Funded with assets that were never held by beneficiary
- Grantor can choose who receives the remaining assets upon beneficiary's death

Estate Planning - Wills

- Legal document that distributes your belongings and who handles your estate after your death
- Testator / Testatrix – person who is making the will
Executor / Executrix – person who manages the estate
Beneficiary – person who receives assets from estate
- Review your will at least every 5 years for possible changes, especially if there's been a birth, death, marriage, or financial change since signing your will
- Without a will, the state's intestacy statutes dictate who is in charge of your estate and who receives your assets, regardless of your intentions

**A Will is IMPORTANT if you have a loved one
who has a developmental disability.**

Conclusion

- Does your loved one need a legal guardian?
- Is there an alternative that would be suitable?
- What best fits the needs for my loved one?
 - Examine functional abilities and available supports
 - Have a discussion with primary care physician(s)

Thank you for your attention

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