

Autonomy, Supported Decision Making & Guardianship

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Agenda

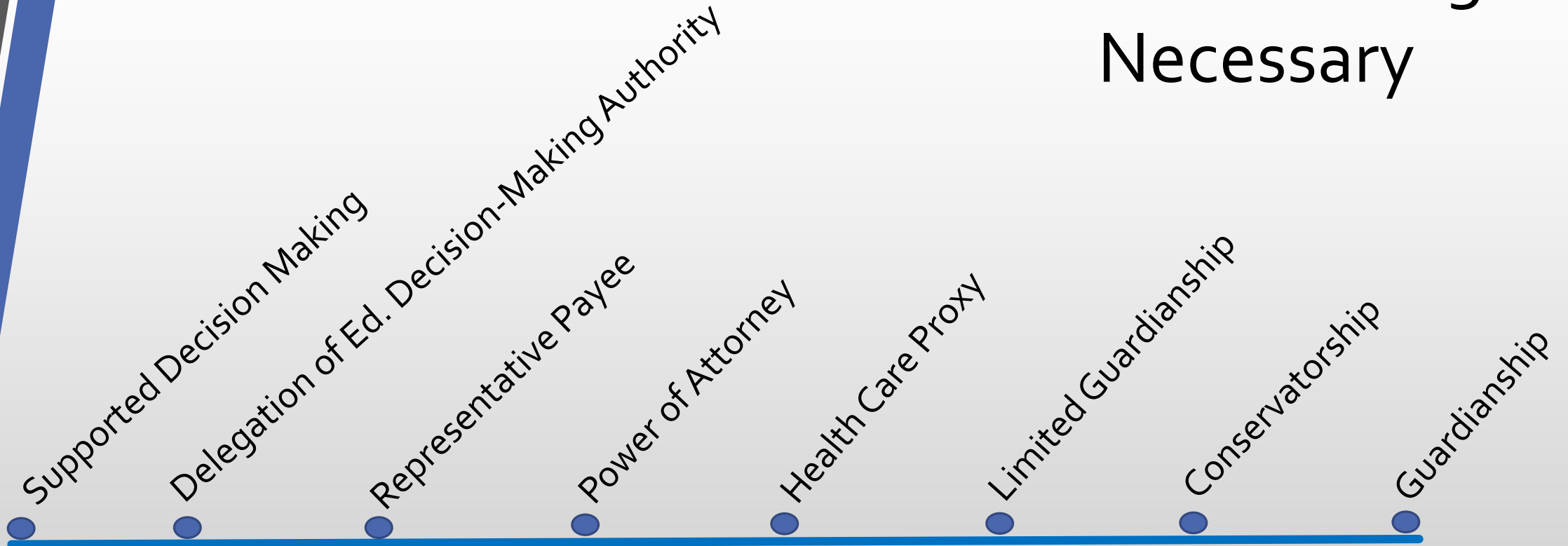
- Legal Emancipation
- Decision-Making Issues
- Alternatives to Guardianship
- Guardianship
- Q&A

18 years of age...

- Legally Emancipated: What does that mean?
- Presumption of competence
- Decision-Making: Independent? With supports? By parents or others?

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- Education
 - Health Care/Medical
 - Legal
 - Financial
 - Employment
 - Housing
 - Adult Services and Providers

When Assistance with Decision-Making is Necessary



The “Negatives” of Guardianship

- Impact on self-determination
 - Loss of civil rights
 - Legal determination of incapacity
 - Loss of “dignity of risk”
- Public
- Possibly \$\$\$
- Responsibilities placed on guardian
- MA law: less restrictive alternatives; limited guardianship



Delegation of Educational Decision-Making Authority

- Student retains
- Shared decision-making authority
- Delegate decision-making authority

Supported Decision-Making:

What is it?

- Supported vs. Substituted
- Remain the decision-maker
- Choose supporters to provide decision-making help when needed
- Promotes self-advocacy, self-determination, independence
- Formal/informal; no single model
- Built in safeguards

Supported Decision-Making:

What's happening around the world?

- United Nations Convention on the Rights of Persons with Disabilities
- All individuals have a will and preferences
- Provide individual with supports necessary to make decisions
- SDM adopted by several countries

Supported Decision-Making:

What's happening in the U.S. and Massachusetts?

- Cases and legislation
- National Resource Center for Supported Decision-Making
- Center for Public Representation and Nonotuck Resource Associates Pilot Project
- SDM Training Series supported by HPOD, DLC, MDDC & MASS

Representative Payee

- Appointed through SSA when the beneficiary is unable to manage his/her benefit checks (SSI, SSDI)
- Does not manage all of the beneficiary's finances

Health Care Proxy

- Principal appoints Health Care Agent
- Authority to make medical care and treatment decisions if Principal becomes incapacitated
- Can be executed without involving the Court
- Must be an adult

Durable Power of Attorney

- Principal appoints an Attorney-in-fact or Agent to act on Principal's behalf
- Manage and protect money, property, business affairs
- Can be executed without involving the Court
- Must be an adult
- Capacity

What is the Guardianship Appointment Standard?

- The person has a clinically diagnosed condition that results in an inability to receive and evaluate information or make or communicate decisions to such an extent that the individual lacks the ability to meet essential requirements for physical health, safety, or self care, even with appropriate technological assistance.
- Less restrictive alternatives are not enough

MUPC: Guardianships Should Be Narrowly Tailored

- Individual should retain as many rights and responsibilities as possible
- Assessment of functional abilities/limitations
- Medical Certificate or Clinical Team Report

Clinical Team Report

- Intellectual Disability
- Must be completed by a physician, a licensed psychologist, and a social worker
- Must be dated within 180 days of filing the petition

Medical Certificate

- Must be dated within 30 days of the filing of the petition
- Must be dated and capacity/competency examination must take place within 30 days prior to the hearing.
- Must be completed by a physician, a licensed psychologist, a certified psychiatric nurse clinical specialist, or nurse practitioner

Role of the Guardian

- To make decisions pertaining to support, education, health and welfare
- To encourage the individual to participate in decisions or act on his/her own behalf
- To consider the individual's expressed preferences and desires
- To act in the individual's best interest
- To exercise only the amount of control/authority that's necessary

Reporting Responsibilities

- 60 days from appointment of guardian
- Annually
- When the individual's condition has changed

Protections for the Individual Subject to Guardianship

- Least restrictive; limited
- Right to counsel
- Right to be present at the hearing

Important Limitations of the Guardian's Authority

- Cannot consent to extraordinary medical treatment**
- Cannot admit to a nursing facility; mental health facility

Extraordinary Treatment & the Requirement of a Substituted Judgment Determination

- Examples:
 - Treatment with antipsychotic medication (Rogers)**
 - Electroshock therapy
 - Sterilization
 - Abortion

Substituted Judgment cont'd

- The judge considers the following factors:
 - Individual's expressed preference regarding the treatment/action
 - Individual's religious beliefs
 - Side effects
 - Prognosis with and without the proposed action
 - Impact on the person's family



Common Questions/Issues

- AFC
- Guardianship/Alternatives Timeline
- Future planning

Resources

- National Resource Center for Supported Decision-Making: <http://supporteddecisionmaking.org/>
- MA Supported Decision-Making Pilot Project: <http://supporteddecisions.org/>
- MA Probate Court forms: <http://www.mass.gov/courts/forms/pfc/pfc-upc-forms-generic.html>
- Volunteer Lawyers Project/Senior Partners for Justice guardianship clinics: https://www.vlpnet.org/volunteer/item.6167-Guardianship_Clinics
- Lawyer for the Day Programs: <http://www.mass.gov/courts/programs/legal-assistance/lfd-pfc.html>
- M.G.L. Chapter 190B, Article V



Questions & Answers

THANK YOU!

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