



Welcome!

- **Introductions**
 - **Catherine E. Davey, JD, LLM**
- **Handouts**
- **Questions**



Agenda

- What are the options available for someone with a developmental disability?
- What is Supported Decision Making?
- What is a Durable Power of Attorney, Health Care Surrogate, etc.?
- Differences between Guardianship and Guardian Advocacy/Partial Guardianship
- The Process of Guardian Advocacy in Florida
- Next steps and what else should I know?



The answer is not always a legal document

Fears

- Credit Cards, etc.
- Doctor won't talk to me/discuss treatment, etc.
- No one to act on their behalf
- Behaviors and I can't protect them
- Can't talk to educators, etc.

Possible Solutions

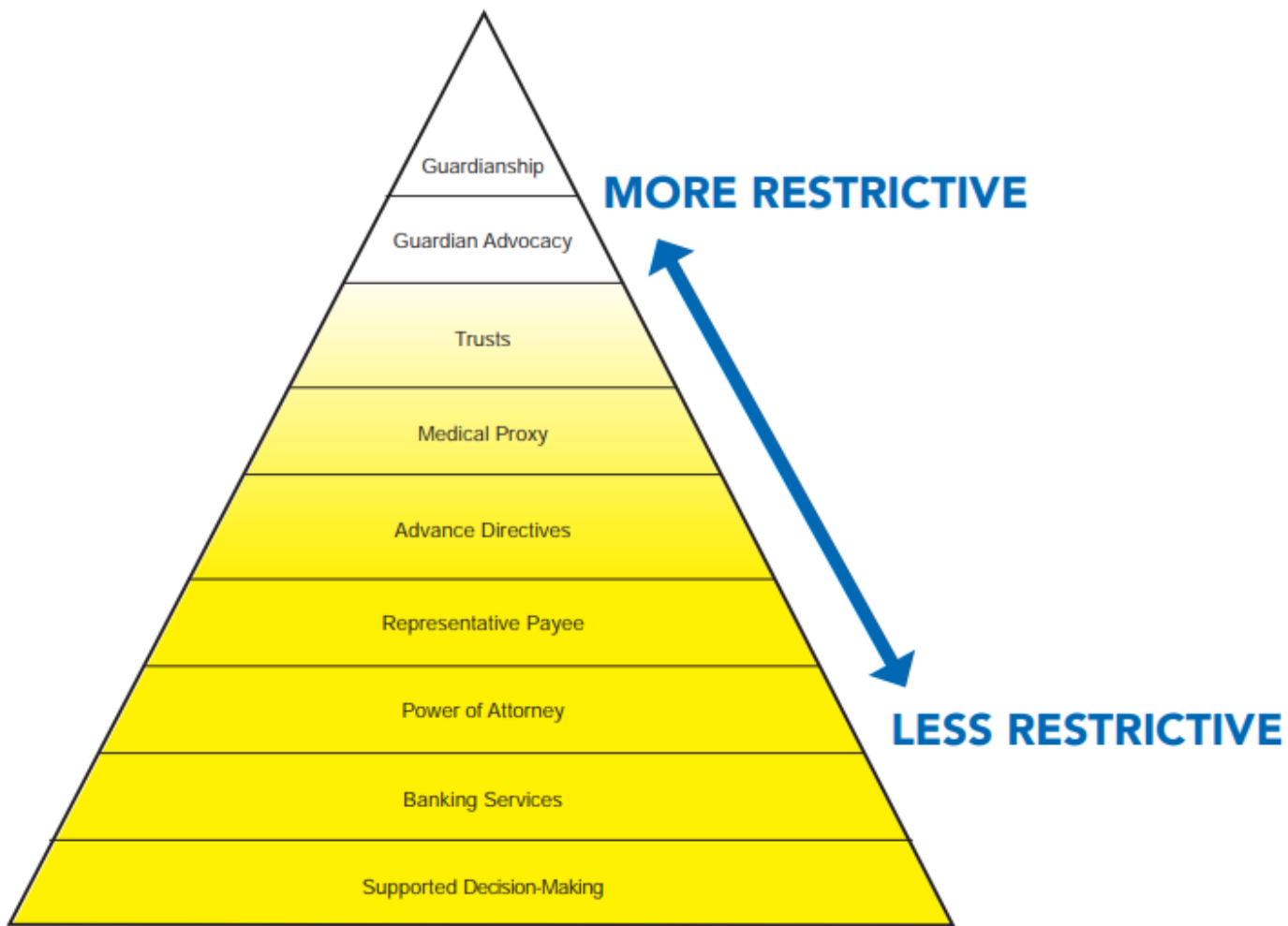
- Freeze credit if allowed (www.consumer.ftc.gov)
- Release of Information/HIPAA Release
- Don't forget your own estate plan
- Registry through OCSD/identifying bracelet/seat belt/shoe tag
- Authorization



What are my options?

1. Supported Decision Making
2. Substituted Decision Making:
 - a. Financial Power of Attorney
 - b. Health Care Surrogate
3. Guardian Advocacy
4. Guardianship





Florida Developmental Disabilities Council, Inc.



Supported Decision Making (SDM)

A tool that allows people with disabilities to retain their decision making capacity by choosing supporters to help them make choices. A person using SDM selects trusted advisors, such as friends, family members, or professionals, to serve as supporters. (from ACLU website)

The supporters agree to help the person with a disability understand, consider, and communicate decisions, giving the person with a disability the tools to make informed decisions. (from ACLU website)

Where can I learn more?

- ACLU Disability Rights Program, www.aclu.org/disability
- National Resource Center for Supported Decision Making, www.supporteddecisionmaking.org
- Quality Trust for Individuals with Disabilities, www.dcqualitytrust.org
- Florida Developmental Disabilities Council, Inc. www.fddc.org



Durable Power of Attorney

A power of attorney is a legal document delegating authority from one person to another. In the document, the maker of the power of attorney (the “principal”) grants another the right to act on the principal’s behalf as their agent. What authority is granted depends on the specific language of the power of attorney. A person giving a power of attorney may make it very broad or very limited.

What are some uses of a power of attorney?

A power of attorney may be used to give another the right to sell a car, home or other property. It might be used to allow another to access bank accounts, sign contracts, make health care decisions, handle financial transactions or sign legal documents for the principal. A power of attorney may give another the right to do almost any legal act that the maker of the power of attorney could do, including the ability to create trusts and make gifts.

Must a person be competent to sign a power of attorney?

Yes. The principal must understand the power of attorney document at the time it is signed. The principal must understand the effect of a power of attorney, to whom the power of attorney is being given, and what property may be affected by the power of attorney.

(as explained in the Consumer Pamphlet, Florida Power of Attorney)



Health Care Surrogate/Patient Advocate

A Health Care Surrogate document is a legal document that names another person as the principal's representative, to make medical decisions for the principal if they are unable to make such decisions for themselves. This can include instructions about any treatment the principal wants or does not want, similar to a living will. An alternate surrogate can also be designated.

Every competent adult has the right to make decisions concerning his or her own health, including the right to choose or refuse medical treatment.

<http://www.floridahealthfinder.gov/reports-guides/advance-directives.aspx>





Which is right for my loved one?

I have to do what? Why?

Prior to the age of 18, everyone is presumed *incompetent*.

Over the age of 18, everyone is presumed *competent*, unless the court rules otherwise.

How do I decide what is right for my loved one?

- <https://flwings.flcourts.org/wp-content/uploads/decision-making-options-toolkit.pdf>
- Turning18.org





Florida's Working Interdisciplinary Network of Guardianship Stakeholders

Exploring My Decision-Making Abilities

Name of Individual: _____	Name of person completing this form (if not individual): _____		
Date Completed: _____	Relationship to individual (circle one): Self _____ Family _____ Friend _____ Guardian _____ Other: _____ How long have you known the individual? _____		
For each question below, mark the level of support you think you need when making and communicating decisions and choices. For general information about the various decision-making options available under Florida law, refer to pages 1 - 6 of the Overview of Decision-Making Options. For more detailed information, refer to Lighting the Way to Guardianship and Other Decision-Making Alternatives (https://www.fddc.org/sites/default/files/LTW_FamilyManual2017%20-%20201.pdf).			
DETERMINE IF ANY SUPPORTS ARE NEEDED	I CAN DECIDE WITHOUT SUPPORT	I NEED SUPPORT TO DECIDE	I NEED SOMEONE TO DECIDE FOR ME
SELF-ADVOCACY			
Can I express my own choices and preferences?			
Can I ask my family, friends or circle of support for help?			
Can I receive services that provide support?			
Can I communicate approval to share information with family members, and friends who are not legal guardians?			
Can I plan what my day looks like?			
Can I understand and communicate permissions regarding legal documents like a basic phone or Internet contracts or power of attorney?			
Can I choose someone I want to support me with making my own decisions if needed?			
Can I pick someone to make decisions on my behalf if I cannot do it myself?			
Can I understand my right to vote?			
EMPLOYMENT			
Can I choose a job or identify volunteer work I'd like to do?			
Can I apply for and find a job or volunteer work?			
Can I seek accommodations if needed for a job or volunteer work?			
MONEY MANAGEMENT			
Can I manage my money?			
Can I apply for benefits I am eligible to receive?			
Can I make everyday purchases?			
Can I pay bills on time?			
Can I tell if someone is taking my money and not using it in my best interest?			



Florida's Working Interdisciplinary Network of Guardianship Stakeholders

DETERMINE IF ANY SUPPORTS ARE NEEDED	I CAN DECIDE WITHOUT SUPPORT	I NEED SUPPORT TO DECIDE	I NEED SOMEONE TO DECIDE FOR ME
HEALTH CARE MANAGEMENT			
Can I make decisions about where, when, and what to eat?			
Can I take medicines as directed?			
Can I understand the need to maintain personal hygiene and dental care?			
Can I make and communicate decisions regarding medical treatment, including the consequences of not accepting treatment?			
Can I understand health consequences associated with high risk behaviors (such as drug and alcohol abuse, tobacco use, unprotected sex, etc.)?			
Can I alert others and seek medical help for serious health problems?			
Can I make my medical appointments (such as doctor, dentist or therapist)?			
Can I make an advance directive (for example, identify wishes regarding life-prolonging procedures, such as CPR or artificial feeding)?			
Can I make medical choices in urgent care situations or in an emergency?			
Can I explain what my medications are for?			
Can I make choices about drugs or alcohol?			
RELATIONSHIPS			
Can I understand the need to consent to sex?			
Can I choose where and when (and if) I want to practice my faith?			
Can I make choices about what to do and who to spend time with?			
Can I understand that how I talk with and touch others depend on the type of relationship I have with them, such as family, friends, co-workers, support staff, boyfriend/girlfriend?			
PERSONAL SAFETY			
Can I avoid common dangers like traffic, sharp objects, hot stoves, or poisonous products?			
Can I recognize when someone is taking advantage of me, hurting me or abusing me?			
Can I protect myself or seek assistance in protecting myself?			
Can I know who to contact if I am in danger, being exploited, or being treated fairly?			
Can I make emergency preparation plans?			
SOCIAL AND COMMUNITY LIVING			
Can I access community resources like church or a local recreational center?			
Can I understand what is involved with maintaining a home that is safe?			
Can I understand and make choices about the supports I want or need?			
Can I understand how to follow the law and how not to break the law?			

CONGRATULATIONS!

You have taken quality time to thoroughly consider your abilities and potential needs for decision-making assistance. Since abilities change over time, you may want to revisit this chart periodically. The decision-making options provided are not legal advice. You have the choice to seek a Florida attorney for legal advice about any of the options described.





Guardian Advocacy

Guardian Advocacy

- Developmental Disability - Florida statutes, Chapter 393
- Only certain rights taken away, not all.
- Person and/or Property
- If it includes property, then Petitioner/Guardian must have an attorney; if seeking Guardian Advocate of the person only, then the Petitioner/Guardian does not have to be represented by an attorney.
- Requires letter from treating physician that Protected Person/Ward:
 - has a Developmental Disability that manifested prior to the age of eighteen (18); and
 - that the individual is unable to handle his/her own personal matters related to finances and physical well-being; and
 - that he/she does need the assistance of a guardian advocate to meet the essential requirements for his/her physical health and/or safety.



2018 Florida Statutes

Chapter 393

DEVELOPMENTAL DISABILITIES

Title XXIX

PUBLIC HEALTH

393.12 Capacity; appointment of guardian advocate.—

(1) CAPACITY.—

- (a) A person with a developmental disability may not be presumed incapacitated solely by reason of his or her acceptance in nonresidential services or admission to residential care and may not be denied the full exercise of all legal rights guaranteed to citizens of this state and of the United States.
- (b) The determination of incapacity of a person with a developmental disability and the appointment of a guardian must be conducted in a separate proceeding according to the procedures and requirements of chapter 744 and the Florida Probate Rules.



2018 Florida Statutes

(2) APPOINTMENT OF A GUARDIAN ADVOCATE.—

(a) A circuit court may appoint a guardian advocate, *without an adjudication of incapacity*, for a person with developmental disabilities, if the person lacks the decision making ability to do some, but not all, of the decision making tasks necessary to care for his or her person or property or if the person has voluntarily petitioned for the appointment of a guardian advocate. Except as otherwise specified, the proceeding shall be governed by the Florida Rules of Probate Procedure.



2018 Florida Statutes

(7) ADVANCE DIRECTIVES FOR HEALTH CARE AND DURABLE POWER OF ATTORNEY.—In each proceeding in which a guardian advocate is appointed under this section, the court shall determine *whether the person with a developmental disability has executed any valid advance directive under chapter 765 or a durable power of attorney under chapter 709.*

(a) If the person with a developmental disability has executed an advance directive or durable power of attorney, the court must consider and find whether the documents will sufficiently address the needs of the person with a developmental disability for whom the guardian advocate is sought. *A guardian advocate may not be appointed if the court finds that the advance directive or durable power of attorney provides an alternative to the appointment of a guardian advocate which will sufficiently address the needs of the person with a developmental disability.*



Guardian Advocacy

1. Intellectual Disability manifested prior to the age of eighteen (18)
2. List set forth in Chapter 393 of the Florida Statutes:
 - a. ASD
 - b. Cerebral Palsy
 - c. Down syndrome
 - d. Phelan-McDermid syndrome
 - e. Prader-Willi syndrome
 - f. Spina Bifida



Guardian Advocacy

3. Rights that can be taken away in a Guardian Advocacy of the person, without an attorney for the petitioners (usually parents or other members of immediate family):
 - a. to determine residence;
 - b. to consent to medical, dental, and surgical care and treatment;
 - c. to make decisions about the social environment or other social aspects of the person with a developmental disability's life;
 - d. to act as representative payee of government benefits and/or to seek such benefits.



Guardianship and Guardian Advocacy similarities:

- **Court system:** *Do I really have to go to court? I'm a parent (or family member).*
- **Attorney for Protected Person:** *Like in a criminal case?*
- **Application?** *I have to apply? Invasive; 10 year history/background check.*
- **Criminal and credit check:** *What if I????*
- **Guardianship education class:** *I have to go where, for what?*
- **Annual filings:** *Will this never end?*
- **Rights can be restored:** *As they mature, can we make changes?*



Can we change our mind in the future?

- Absolutely!
- Guardian advocacy may be right for your family right now, but you may still need to transition to guardianship in the future.
- What if my loved one continues to grow and mature and no longer needs help (or as much help)?
 - What do I do? The Gua Adv/attorney/Protected Person files a Suggestion of Capacity and the court appoints a doctor to examine the Ward. The court-appointed doctor then makes recommendations to the court about which rights can be restored to the Ward.
- What if I can't or don't want to be Guardian/Advocate any more?
 - Stand By or Successor Guardian Advocates





Guardianship

Guardianship

- Incapacity for any reason, i.e., Alzheimer's, auto accident, minor child - Chapter 744
- Types: Person (medical, social, etc.) and/or Property (assets, government benefits)
- Any or all rights can be taken away from the Protected Person/Ward.
- Both the Guardian and the Protected Person/Ward must be represented by (separate) attorneys.
- Requires the court's determination of incapacity of the Protected Person/Ward.



Guardianship

1. Some triggering events that may require a guardianship to be established include: dementia/Alzheimer's disease, mental health issues, accident or injury, minority, etc.

2. Rights that can be taken away in a Guardianship:
 - a. to personally apply for government benefits;
 - b. to contract;
 - c. to sue and defend lawsuits;
 - d. to manage property or to make any gift or disposition of property;
 - e. to determine [his/her] residency;



(Rights that can be taken away in a Guardianship, cont.)

- f. to consent to medical and mental health treatment;
- g. to make decisions about [his/her] social environment or other social aspects of life;
- h. to marry;
- i. to vote;
- j. to travel;
- k. to have a driver's license;
- l. to seek or retain employment.



Guardianship (cont.)

3. Examining committee: 2 doctors and a trained layperson
4. Attorney ad Litem/Elisor appointed for Alleged Incapacitated Person
5. Difference in costs between Guardianship/Guardian Advocacy; the cost of establishment, as well as the annual expenses
6. Time difference of 3-5 months (for establishment)



What are the next steps?



- Determine what is right for your loved one and your family
- If Guardianship is best, then select an attorney to assist you
- If Guardian Advocacy is best for your family, consider the following:
 - Can I work through the process on my own using the materials available including the step by step guide?
 - Do I need an attorney to review my paperwork before submitting it to the clerk of the courts?
 - Do I need an attorney to prepare my paperwork and guide me through the process but I can do the rest on my own?
 - Do I need an attorney to handle the entire process for my family?



- If the use of Legal Instruments is best then determine the need for the following:
 - Power of Attorney, Medical Proxy, Trusts, etc.
 - Use a reputable attorney to prepare your documents
 - Florida Bar Referral Service
- If Supportive Decision Making is the right choice for you family, then do your research and be aware of how best to support your family member.
 - “Lighting the Way to Guardianship and Other Decision-Making Alternatives A Manual for Individuals and Families” manual available online www.fddc.org



**Thank
You!**



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