



Welcome!

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Agenda

- How can I help students and their families with an ID/DD after they turn 18?
- What are some common fears and solutions to those fears?
- What are the options available these students and families?
- 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?



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What are some common fears?

That their children will be exploited or taken advantage of somehow.

That their children can't manage their meds or they can't make medical decisions.

The doctors will no longer talk to parents or allow them to continue to make medical decisions for their child/loved one.

No one will help the students or let the parents help them.

Parents can no longer advocate for them or protect them.

Parents can no longer advocate for them at school.



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How can we allay those fears?

Fears

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

Possible Solutions

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



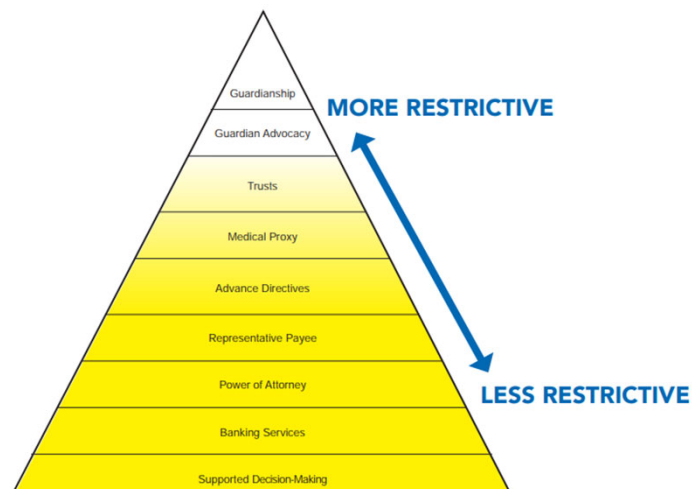
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What are the options?

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



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Florida Developmental Disabilities Council, Inc.



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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



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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 a power of attorney (the “principal”) grants another the right to act as their agent on the principal’s behalf. What authority is granted depends on the specific language of a 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 a 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 when 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 a power of attorney.

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



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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 cannot 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 their health, including the right to choose or refuse medical treatment.

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



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Which is the right choice?

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Parents 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 parents decide what is suitable for their loved one?

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



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EXPLORING MY DECISION-MAKING OPTIONS



Florida's Working Interdisciplinary
Network of Guardianship Stakeholders




Florida Center for
INCLUSIVE COMMUNITIES

Florida's WINGS is supported by Grant No. 008JZ0000701-00 from the Administration for Community Living, U.S. Department of Health and Human Services (HHS). Opinions, reports and projects under government sponsorship are intended to serve only the funding and conclusions. Therefore, points of view or opinions do not necessarily represent official Administration for Community Living or HHS policy.



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Florida's Working Interdisciplinary Network of Guardianship Stakeholders


Exploring My Decision-Making Abilities

Name of individual: _____ Date Completed: _____

Mean of person completing this form (if not individual): _____
Relationship to individual (check 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 - 4 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.fdcj.org/resources/the-cpr-announcement/>).

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 identify 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 advocates?			
Can I plan what my legal bills look like?			
Can I understand and communicate permissions regarding legal documents like basic choice or informed contracts or power of attorney?			
Can I choose someone I want to support me with making my own decisions if needed?			
Can I ask someone to make decisions on my behalf if I cannot do it myself?			
Can I understand my right to sue?			
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 ask accommodations if needed for a job or volunteer work?			
FINANCIAL 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?			



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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 regulate 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, gambling, etc. (1)?			
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 informed decision the research, identify services regarding the screening 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 when and when I want to practice my faith?			
Can I make choices about what to do and when to spend my work?			
Can I understand that how to talk with and teach others depend on the type of relationship I have with them, such as family, friends, co-workers, support staff, volunteer/employee?			
PERSONAL SAFETY			
Can I avoid situations (change the traffic, change objects, eat items, or consume products) and respond 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 when to contact 911 or a lawyer being exploited, or being treated badly?			
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 support's want or need?			
Can I understand how to know the law and how to know 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.



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Guardian Advocacy

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Guardian Advocacy

- Developmental Disability - Florida statutes, Chapter 393
- Only certain rights are 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 a 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 their own personal matters related to finances and physical well-being; and
 - that they do need the assistance of a guardian advocate to meet the essential requirements for their physical health and safety.



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2021 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.



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2021 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.



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2021 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.*



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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



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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.



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Guardianship

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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.



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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;



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(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.



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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)



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Guardianship and Guardian Advocacy similarities:

- **Court system:** *Do parents have to go to court?*
- **Attorney for Protected Person:** *Like in a criminal case?*
- **Application?** *Do parents have to apply? Invasive; 10-year history/background check.*
- **Criminal and credit check:** *What if????*
- **Guardianship education class:** *Parents have to go where for what?*
- **Annual filings:** *Will this never end?*
- **Rights can be restored:** *As they mature, can changes be made?*



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Can Things change in the future?

- Absolutely!
- Guardian advocacy may be suitable for the family right now, but they may still need to transition to guardianship in the future.
- What if an individual continues to grow and mature and no longer needs help (or as much help)?
 - What do parents 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 a person can't or won't be Guardian/Advocate anymore?
 - Stand By or Successor Guardian Advocates



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Judges Expectations



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What happens in the courtroom?



- Do you have to go to court?
- What should they bring?
- What is the judge going to say?
- What if they forgot to do something?
- Can they take loved ones away from family?
- What if a family member is scared and does not want to come to court?
- What are some things that they shouldn't do?
- How long will the hearing take?



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What are the next steps?



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- Determine what is right for the individual and their family
- If Guardianship is best, then select an attorney to assist in the process
- If Guardian Advocacy is best for the family, consider the following:
 - Can the family work through the process on their own using the materials available including the step-by-step guide?
 - Does the family need an attorney to review the paperwork before submitting it to the clerk of the courts?
 - Does the family need an attorney to prepare the paperwork and guide them through the process, but they can do the rest independently?
 - Do they need an attorney to handle the entire process for the family?



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



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Thank
You!



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