

# FACT SHEET

## Least Restrictive Approaches to Supporting Individuals as Decision Makers

Too often full guardianship is the default option for individuals who need assistance with decision-making, which is very restrictive. There are alternative approaches to guardianship that are flexible and can adapt to the changing needs an individual may experience.



September 2019

**No matter what the individual's preferences, abilities, and communication style, there is an option that will work for them.**

### Alternative approaches to guardianship

#### Least Restrictive

- Supported Decision Making
- Advocacy Forms
- Online or Bill Payment Service
- Joint Checking Account

Individual retains full independence and full decision-making power, and is able to access support as needed.

#### Less Restrictive

- Power of Attorney
- Representative Payee
- Special Needs Trust
- Healthcare or Advanced Directives

Individual retains some, but not all, control over decisions. A representative is designated to make decisions "for" an individual in specific areas.

#### More Restrictive

- Limited or Temporary Guardianship

A guardian is limited in which areas they act as the decision maker for the individual, or serves for a specific amount of time. The order is tailored by the court.

#### Most Restrictive

- Full Guardianship

A guardian has full decision-making control over all areas of an individual's life. Requires a court order.

See Page 4 for decision-making resources.

### How to determine which approach is the best fit

Every person needs different types of supports in order to make their own decisions and participate as they wish in their community. In order to create an individualized support system, it is essential to answer the following questions about the person being supported.

- What are their current skills and strengths?
- What skills need development?
- What are the concerns and fears of those who provide support or assistance?
- What is the least restrictive form of decision-making assistance available that takes into account the person's welfare and safety, and opportunity for skill development and growth?

## What is guardianship?

Guardianship is a legal process in which the court determines that an individual does not have the capacity to make decisions either generally or in specific areas. The court then will appoint a guardian. Establishing and changing a guardianship requires going to court and can be expensive.

## What does a guardian do?

A guardian is someone who is responsible for making decisions about the person under guardianship. There are different levels of guardianship. Guardians might have the legal right to sign contracts and make financial, medical, educational, and other types of decisions for the person under guardianship. The guardian may need to occasionally show a court they are making good decisions on behalf of the person under guardianship.

## Why consider alternatives to guardianship?

There are many reasons to consider less restrictive options than guardianship. For example, people who have the opportunity to make their own decisions become more independent, have successful employment, and are more integrated into their communities (Jameson et al., 2015). As individuals develop new skills, adjustments to decision-making supports can be made without going to court.



## Myths about decision-making supports

### Myth:

It is full guardianship or nothing.

### Reality:



There are many different supports available to assist people with decision-making.

Guardianship is only one of several options, and even within guardianships there are options such as full, partial, and temporary.

### Myth:

If a person can't communicate without support, they need a guardian.

### Reality:

If a person uses an alternative form of communication that does not automatically mean they need a guardian. It is important that the individual doesn't lose their right to advocate for themselves because it's 'easier' for another person to communicate on their behalf.



Use a person-centered planning approach to identify how the individual prefers to communicate, and use those communication methods in the decision-making process.

## The importance of empowering language

The words and language we use can impact others, and may have unintended meanings. Guardianship is often thought of as a logistical decision, so it can be easy to forget how this influences an individual's self-worth and perception of how others value their opinions.

It is important for families and service providers to remember to use empowering language as they talk with individuals about guardianship and other alternative approaches. For more on this topic:

- [What is in a word? The evolution of disability language](#), by Glenda Watson Hyatt
- [Respectful Disability Language: Here's What's Up!](#) from the National Youth Leadership Network (NYLN) and Kids As Self Advocates (KASA)

### Myth:

Support person or guardian = decision maker

### Reality:

The concept of providing support or serving as a guardian is shifting. In the past, family members, support staff, guardians, or others might make all of the decisions for, and about, a person who needed assistance.



Those who support individuals or serve as guardians are responsible for making decisions based on what the individual would choose. Instead of "What do I think is best for this person?" the question becomes, "How would this person make this decision?"

### Myth:

Guardianship laws are updated when laws for individuals with disabilities are updated.

### Reality:

Unfortunately, guardianship laws have not progressed at the same pace as civil rights for individuals with disabilities.



Every state has different guardianship laws. Find out what alternative approaches are supported in your state, and how the state views guardianship. Every state can have different protocols, requirements, and available resources.

For example, Texas requires that guardianship be reviewed and approved each year, rather than for life, which makes sure that the approach more closely matches the individual's skills and needs. See: [A Texas Guide to Adult Guardianship \(PDF\)](#) and [Texas Guardianship Reform \(PDF\)](#). Other states, such as Maine, have adopted the Uniform Law Commission's standard as their state standard.

Some states have created state-specific toolkits as resources for families to understand what is offered in their state. See Montana's toolkit here: [Alternatives to Guardianship Toolkit \(website, PDF available\)](#) (2018).

## Efforts to promote national standards

The [Uniform Law Commission \(ULC\)](#) established recommended national standards for guardianship.

See [Guardianship, Conservatorship, and Other Protective Arrangements Act](#) for more information and to view an interactive map of states that have enacted or introduced this legislation.

# Learn more: Guardianship and decision-making resources

## Supported Decision-Making

- [National Resource Center for Supported Decision-Making Welcome Message \(PDF\)](#): An overview of Supported Decision-Making and the Right to Make Choices.
- [National Resource Center for Supported Decision-Making Resource Library \(website\)](#): User-friendly resources, guides, toolkits and online trainings for families, individuals, and service providers on guardianship, education, and health care.
- [The Right to Make Choices: International Laws and Decision-Making by People with Disabilities: Easy Read Edition \(PDF\)](#): A publication of the Autistic Self Advocacy Network (ASAN), this document explains Supported Decision-Making and some alternatives to guardianship. Includes a glossary of terms related to guardianship.
- [Charting the LifeCourse \(website\)](#): The Charting the LifeCourse framework was created by families to help individuals of all abilities and ages and their families develop a vision for a good life and identify how to find or develop supports.
- [Charting the LifeCourse Tool for Exploring Decision Making Supports \(PDF\)](#): A checklist to help explore decision-making support needs for each life domain.
- [PRACTICAL Tool for Lawyers: Steps in Supported Decision-Making \(website\)](#): This American Bar Association publication helps lawyers identify and implement decision-making options that are less restrictive than guardianship.



## Person-Centered Planning

- [National Parent Center on Transition and Employment: Person-Centered Planning \(website\)](#): Information about person-centered planning, how to do it, and resources.

## Self-Determination

- [Self-Determination: Supporting Successful Transition \(PDF\)](#): A research brief from the National Center on Secondary Education and Transition about self-determination. Includes tips for families and professionals on how to promote self-determination in youth with disabilities.
- [Beyond Guardianship: Toward Alternatives That Promote Greater Self-Determination for People with Disabilities \(web page, PDF of report available\)](#): 2018 report from the National Council on Disability that shares findings and recommendations for policymakers on the state of guardianship in the US.



## Reference

Jameson, M., Riesen, T., Polychronis, S., Trader, B., Mizner, S., Martinis, J., & Hoyle, D. (2015). Guardianship and the potential of supported decision making with individuals with disabilities. *Research and Practice of Persons with Severe Disabilities*, 40(1), 36-51.

## More about guardianship in Montana

[Montana WINGS- Working Interdisciplinary Network of Guardianship Stakeholders \(website\)](#)

is a group of stakeholders who provide ongoing evaluation and recommendations regarding Montana laws, services, and practices related to adult guardianship and conservatorships. The Resources page on the website includes both national and Montana-specific information on guardianship and less-restrictive options.

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## For Additional Information

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The contents of this fact sheet were developed in whole or in part under grants from the U.S. Department of Health and Human Services, Administration on Community Living (grant #90DDUC0010); U.S. Department of Education, Office of Special Education Programs (grants #H326T180038 and #H326T180026); and under a contract with the Montana Department of Public Health and Human Services. The contents of this fact sheet do not necessarily represent the policies or opinions of the Departments, and you should not assume endorsement by the Federal or Montana State Government. All pictures from HealthyCommunityLiving.com.