

Talking Points for CHOM

Introductions

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Walk away points

1. YOU know your loved one better than anyone else.
2. Guardianship removes basic civil rights.
3. Alternatives are available.
4. Guardianship is a last resort.
5. If parent/guardian, please future plan for yourself (Will, POA, trust, etc.); best gift for your loved one!

Common Myths to ask audience

- If someone has a disability do they need a guardian? (Absolutely not!)
- If a professional (doctor or lawyer or social worker even SS office) says a person needs a guardian, then they need one, right? (NO! Just because someone is a professional does not mean they have had ANY training in guardianship!)
- Guardianship will get your loved one better services (NO!)

What is guardianship?

- The removal of basic civil rights, loss of independence. What does this mean? Cannot make purchases, enter contracts, engage in sexual relations....
- That said, it is a piece of paper and will NOT control your loved one. The act of getting guardianship will not solve your problems!
- Guardianship is **not an automatic** extension after age 18.
- Guardians should involve the person as much as possible; making decisions on behalf of someone else requires strong advocacy and time to understand the person's preferences, desires, needs...

Rights Retained

1. Right to vote
2. Cannot be sterilized (persons with a disability cannot be sterilized without court order in Maine).
3. To be treated with dignity and respect and participate in decisions as much as possible.

Alternatives to Guardianship

- Power of Attorneys
- Surrogate decision makers
- Estate management issues
- Pooled Disability Trusts
- Joint checking accounts and Payee ship

Maine Probate courts and the Six Pillars of Capacity

- Burden of proof has changed to clear and convincing, meaning more evidence is needed
- Most judges are embedding [Six Pillars of Capacity](#) in the process; this provides a framework to gather information for a guardianship hearing

So what are the Six Pillars of Capacity?

Medical Condition causing functional disability

Cognitive Functioning component

Everyday Functioning component

Values, preferences and patterns

Risk of Harm and supervision needed

Means to Enhance capacity

The Probate Court Process

Petition packet (Guardianship Plan- very important to take the time to fill this out)

Court Visitor- eyes and ears of judge, “visits” person and others involved to report to court

Judge- encourage loved one to participate in process and go to hearing

Costs- roughly \$500+

Do you need a lawyer?- No, but most people who do not understand the process feel more comfortable hiring an attorney.

Common guardianship terms

Ward- person under guardianship

AIP- Alleged Incapacitated Person, individual at center of guardianship process

Incapacitated- unable to make, understand or communicate decisions

Two main types of guardianship

- Full- all rights removed
- Limited –preferred now, tailored to fit individual’s needs
Time limited appointments can be requested especially for young adults. Request review at age 25

Three types of guardians

- Private- family, friends/loved ones
- Public- DHHS Office of Adults with Cognitive and Physical Disabilities (OACPDS)- specifically serves adults with intellectual/developmental disabilities 18+; Office of Elder Services (OES) serves all other adults 18+
- Professional- Any individual or business (Maine Adult Guardianship Services, LLC) that is paid to serve as guardian