



# Rethinking Guardianship

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# DISABILITY RIGHTS

NORTH CAROLINA

Champions for Equality and Justice



North Carolina  
Community Transitions Institute

# What is Disability Rights NC?

- Protection and Advocacy (P&A) system for people with disabilities in NC. We:
  - Investigate complaints of serious abuse or neglect
  - Advocate for legal rights
  - Tell people with disabilities about their rights and support self-advocacy



**All of our services are FREE  
for people with disabilities!**

# Decision-Making Authority

## Guardianship:

A **court order** defines scope of authority of guardian.

## Power of attorney,

representative payee, living will, supported decision-making agreement, etc.:

A **written contract/ agreement** between individuals.

*In other words, a person's authority to make or participate in making decisions about someone else must be in writing!*

# Guardianship

- If a person has been adjudicated incompetent, Clerk must appoint a guardian (general guardian, guardian of the estate, guardian of the person)
- Incapacity is not an all-or-nothing matter. Limited guardianship is appropriate when an individual has sufficient capacity to make certain types of decisions.
- A helpful tool to identify areas of decision-making strength is the **“Guardianship Capacity Questionnaire”** – available on NC Courts website, and Disability Rights NC website

# Becoming One's Own Guardian Again

- Competency is a changing status. People can recover and/or acquire skills that lessen or eliminate the need for guardianship.
- The ward, guardian, or other interested person can motion for restoration of competency.
- Motion for “restoration of competency” must be filed with the Clerk of Court that has jurisdiction over the guardianship.

\*May not be current county of residence.\*

# **Alternatives to Guardianship: Voluntary Decision-Making Agreements**

# Representative Payee



- Social Security Agency (SSA) selects a person or organization to receive and manage benefits on behalf of a beneficiary who is legally incompetent or whom SSA determines is not capable of managing benefits.
- Main responsibilities of the rep payee are to (i) use the benefits to pay for current and foreseeable needs of the beneficiary; (ii) save any benefits not needed to meet current needs; (iii) keep records of expenses; and (iv) provide SSA with an accounting.
- Must be approved by SSA to be rep payee. (≠ Power of Atty)



# Special Bank Account



- A variety of arrangements can be made.
- Personal banker can discuss options.

# Special Needs Trust



- A trust designed to hold funds for the benefit of a person with a disability.
- Typically useful when a person with a disability receives a large, lump sum of money that will impact his or her eligibility for Medicaid or other lifeline benefits.

# ABLE Account



- Similar purpose as a special needs trust, structured like a 529 college savings account.
- Is designed to hold funds for the benefit of a person with a disability. Money deposited in the account will not impact his or her eligibility for benefits.
- \$100,000 maximum (above this counts towards benefits eligibility), and \$14,000 maximum contributions/year.
- Disability must be diagnosed before age 26.

# Home Health Care



- Home health agencies can assist with activities of daily living such as bathing, dressing, cooking, and cleaning and can support someone in the community if the person can make decisions about their care.

# Supportive Housing



- Permanent housing with services (type of service depends on needs of residents). The housing is usually “affordable” - intended to serve persons on an SSI income.
- Supportive Services: services such as case management, medical or psychological counseling and supervision, child care, transportation and job training provided for the purpose of facilitating the independence of residents.

(definitions from NC Housing Coalition glossary of terms)

# Health Care Power of Attorney\*



- Allows the person designated as POA to make health care decisions in the event of incapacity.
- The appointment of a guardian terminates a health care power of attorney for the ward.
- You may nominate someone in POA document to be your guardian in the event you are later adjudicated incompetent, and the clerk shall appoint them.

# Advance Instruction for MH Treatment\*



- Also known as a “Psychiatric Advanced Directive”
- Allows a person to give instructions and preferences regarding mental health treatment, and to appoint an agent to make these decisions if they become incompetent.

# Living Will\*



- Declaration that person desires to die a natural death. A living will gives medical professionals permission to withhold or withdraw life support systems under certain conditions.



# Power of Attorney\*



- Person grants authority to the attorney-in-fact to handle some or all affairs. The POA may grant authority regarding one transaction or the authority to handle most of the person's personal and financial matters.
- The POA can:
  - Be effective immediately, or
  - Springing (i.e., at a point in the future, if a person becomes unable to handle their affairs, either temporarily or permanently), or
  - Durable, meaning it survives incapacity, and remains in effect even if a guardian is appointed.

# Supported Decision-Making



Supported decision-making reflects the belief that we are all able to make decisions, and that some decisions are complex but can be made with support.

The person with a disability chooses who will **help** them make decisions. The supporter may give advice, but **does not** make the final decision



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# RETHINKING GUARDIANSHIP

Building a Case for Less Restrictive  
Alternatives in North Carolina

## Overarching Goals of this Initiative:

- \*Promote less restrictive alternatives to guardianship
- \*Create long-term change in NC's guardianship system
- \*Create a process of collective impact in a pilot site



\*Project Overview

## **Funding:**

- \* NC Council on Developmental Disabilities through the NC Division of Aging and Adult Services to the UNC Chapel Hill Jordan Institute for Families, School of Social Work
- \* Three-year grant; completing Year 2 in December
- \* New funding for youth transitioning into adulthood

## **Collective Impact framework:**

- \* Joining the WINGS States (Working Interdisciplinary Network of Guardianship Stakeholders)
- \* Statewide workgroup
- \* Catawba County pilot site



\* **Project Overview**

## Desired Outcomes:

1. A system that is less restrictive and based on best practices
2. All stakeholders are identified
3. Options and pathways toward guardianship and alternatives are understood and communicated
4. The system is held accountable
5. Information is easily available and accessible



\*Our Common Agenda



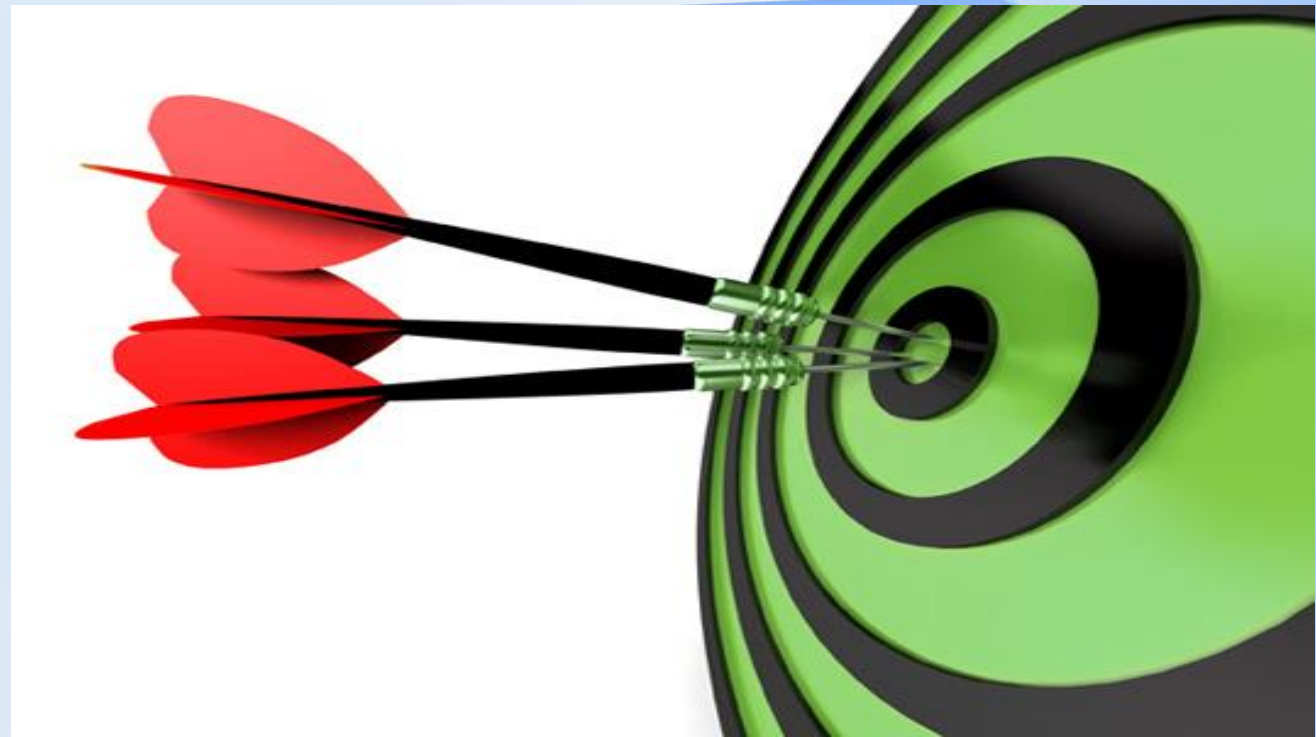
The Year of Hunting and  
Gathering...

\*Year One





The Year of Focused  
Action towards Desired  
Outcomes...



\*Year Two

## Legislation/Practice subcommittee

1. NC guardianship statute 35A recommendations

1. Private guardian training curriculum

## Education and Awareness subcommittee

3. User friendly website

\* Year 2 - Three Subcommittee & Six  
Priorities





HOME

OUR MISSION

WHO WE ARE

RESOURCES

PILOT PROJECTS

STORIES

CONTACT US

## Welcome



\*Website development

## Data & New Stories subcommittee

### 4. Catawba County Pilot Support

\* Conduct county level guardianship case reviews

### 5. AOC (Administrative Office of the Courts) Data Analysis

### 4. Guardianship story collection

\* Year 2 - Three Subcommittees & Six  
Priorities





Mother & Son in 1993

## \*North Carolina Stories Drive Change!!

*“When I was told that I should petition for guardianship as my son became an adult, the first thing I thought of was ‘Guardian Angel’ - someone to protect you and guide you.”*

*“When people go to file a petition, they should be given information, perhaps a brochure, **that makes it clear what guardianship is and what alternatives exist.** Guardianship is SO serious and legally binding.”*



Peggy and Jean are twin sisters, born in 1951... they were very close to each other...

Jean's private guardian has blocked access to her sister Peggy for over three years.

Peg writes, *"There is no accountability or oversight of the guardians or the local court system that is supposed to govern the guardians."*

*"The guardian laws allow for such unlimited interpretation of the law by Court officials, that any basic and vital law can easily be ignored and broken."*



*Stock photo - actual sister wishes to remain anonymous*



**\*Having my rights restored was very important to me. I can go anywhere I want without permission.**

- I had lots of diagnoses and medications by the time I was an adult. I went to the hospital often; I believe this is when they said I needed a guardian. I can remember using heroin when I was 14 and I made bad decisions.
- I have learned some ways to deal with myself and others, but I also know I have to continue to work on this. I continue to use some community resources to assist me, but I am more in charge of taking care of those things for myself.





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\*Thank you!