

## Welcome and Orientation – Video 2

### Alternatives to Guardianship

*(Introductory music and images)*

*Speaker appears in comfortable, neutral setting. At times words and pictures will appear next to them or in place of them to support the dialogue.*

**Speaker:** Since guardianship takes away rights and decision-making power from incapacitated persons, it should be considered only as a last resort.

If you have been asked to be a guardian, be sure to explore all alternatives before a petition requesting a guardianship is filed with the court.

Once you are appointed guardian, it is your responsibility to advocate for the incapacitated person. Part of that advocacy is determining if guardianship is necessary or if an alternative to guardianship exists.

Some common alternatives to guardianship include supportive relationships and residential settings, assistive technology, community supports, advance directives, powers of attorney, and health care representatives.

These alternatives to guardianship are considered “less restrictive” than guardianship because they allow the individual to retain more of their rights and decision-making power.

Before we talk about the various alternatives to guardianship, let’s listen to siblings Anne and Bob talk about how to meet the needs of their mother, Rachel.

*Anne and Bob are in Anne’s living room. Bob stopped by on his way home from their mother’s house.*

**Anne:** *(Gives Bob a hug.)* Hey, thanks for visiting mom today. I’ve been worried about her since dad died.

**Bob:** Yeah, me too. I just left her house and am really concerned.

**Anne:** What happened?

**Bob:** The house was dirty, which is totally unlike mom, but she told me it’s just too hard for her to keep it all clean. I saw unopened mail on the counter including some notices for unpaid bills, and when I offered to pick up any prescriptions she needed refilled, she was confused about which of her pills were which.

**Anne:** I know she has been having a hard time living alone, but this is worse than I thought.

**Bob:** I think this goes beyond having a hard time. If she can’t pay her bills, track her medications, or keep the house clean, I think we need to step in on her behalf. I called mom’s doctor to try to get the medications organized and his office suggested that I become her guardian.

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**Anne:** Wait, I've heard about guardianship. From what I've heard, it is a last resort if nothing else works. It would take away mom's rights and decision-making power. I'm worried about that. You remember my friend Sally? When her father was having problems, the doctor said they should go to court for a guardianship. After that happened, he lost all of his rights and was placed in a nursing home.

**Bob:** Well, we need to do something. Mom can't continue to try to do everything on her own. We should talk to her about what she wants for herself and how we can support her and help her with her goals and wishes. Guardianship may not be ideal, but what other choices do we have?

*Speaker appears in a comfortable, neutral setting. At times words and pictures will appear next to them or in place of them to support the dialogue.*

**Speaker:** Now let's look at some less-restrictive alternatives to guardianship that may meet Rachel's needs.

Bob mentioned that Rachel's home was dirty, and that she expressed that it was too hard for her to keep it clean. This could be addressed by hiring a cleaning service, getting help informally from family and friends, or possibly even moving to a supportive residential environment.

An individual may be able to avoid guardianship if they have supportive family, friends, and others who can help them with certain tasks that they are not capable of doing on their own. There are also home- and community-based services available that may meet their needs, including home care, adult day centers, and homemaker services. These can be provided privately or through a public program for those who are low income. Additionally, certain residential settings may provide a supportive environment and certain assistance that will allow the person to live independently while getting necessary support. Contact the Pennsylvania Link to Aging and Disability Resource Center or use the Federal Eldercare Locator to get more information.

Bob also noticed his mom's unpaid bills on her counter. Bob, Anne, or another trusted individual could assist Rachel with setting up automatic bill pay to avoid this issue. Rachel could also give them viewer access to her online banking so they can make sure bills are being paid and discuss any concerning activity in the account with Rachel. There are many tools available to meet Rachel's financial needs without a guardianship.

To learn more about alternatives to guardianship that can specifically address the financial needs of the person, please watch the Financial Options video. This video is part of the Guardian of the Estate Course and provides more in-depth information regarding specialized accounts, financial management, and estate planning.

Bob was concerned that Rachel did not have a good understanding of her prescription medications. It is important for Rachel's health that she take the right medications at the

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right dosage and frequency. Luckily, there is a broad range of assistive technology available to help individuals, including medication reminder and distribution devices, such as AM/PM medication organizers, that could help Rachel stay organized and safe.

Other assistive technology available to meet individuals' needs include communication aids, adaptive transportation, security, or elopement alert systems, and more. This technology can improve individuals' quality of life by allowing them to maintain personal safety and autonomy.

Though Rachel's doctor brought up guardianship with Bob, there are some alternatives, including advance directives, that can allow Rachel to determine who will make medical and financial decisions on her behalf should she become incapacitated.

Advance planning documents are documents that must be created while the individual still has the decision-making capacity to indicate their wishes regarding health and financial decisions and choose people they trust to act on their behalf should they lose capacity.

Please note, the specific requirements and uses of each advance planning document are subject to state law. It is recommended that these documents be created with the assistance of an attorney. Examples of common advance planning documents that can prevent the need for a guardianship include:

A financial Power of Attorney document allows an individual to appoint someone, referred to as an agent, to act on their behalf in financial matters should they lose capacity.

A Health Care Advance Directive, which may include a Living Will, Health Care Power of Attorney, Physician Order for Life Sustaining Treatment, or Mental Health Power of Attorney.

A Living Will gives instructions for making medical decisions regarding end-of-life care.

A Health Care Power of Attorney appoints someone to make medical and end-of-life decisions on the person's behalf.

A Physician Order for Life Sustaining Treatment, sometimes referred to as POLST, can be created by a doctor to communicate a patient's condition, preferences, and end-of-life medical care decisions when that patient has a terminal illness. If a patient decides to create a POLST with their doctor's help, the form then stays with the patient in case they need emergency care or become incapacitated.

Finally, a Mental Health Power of Attorney permits a person with a mental illness to provide instructions in advance regarding the treatments and medications to which the person would consent if able and may name an agent to act when the person is not able to make decisions.

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Additionally, in Pennsylvania, if an individual does not have a guardian or any health care advance directives, and a doctor determines they are not able to make their own medical decisions, a health care representative can make medical decisions on the person's behalf. When determining who may act as health care representative, statute states that priority goes to the spouse, adult children, and other close family members. While the doctor may have the representative sign a declaration, the court, generally, is not involved with this process. In fact, you are able to act as a Health Care Representative for a loved one with no special documents at all.

Anne and Bob should work with Rachel to ensure her safety and wellbeing, but as an adult, Rachel is entitled to make her own choices about her life.

Supported Decision-Making is a process that allows an individual to make their own decisions after consulting with trusted supporters.

These supporters can help them understand the decision they need to make and provide guidance about their options, but ultimately the individual is the one who makes the decision.

Supported Decision-Making can be used instead of guardianship, with other less-restrictive alternatives, or as part of a guardianship, when appropriate, to ensure the person with a guardian is as involved as much as possible in decision-making.

Should a court determine that Rachel has lost some decision-making capacity, and if no less-restrictive alternative can address Rachel's needs, a limited guardianship may be appropriate.

Limited guardianships are also considered less restrictive than plenary, or full, guardianships because they transfer fewer decision-making powers to the guardian, allowing the partially incapacitated person to retain some of that authority.

As you can see, there are a variety of alternatives to guardianship available that may meet an individual's needs. Guardianship should be the last resort when no alternatives are available.

Finally, it is important to remember that incapacitated persons may in some cases partially or fully regain capacity.

If you are serving as a guardian for someone whose level of capacity has changed, it is your responsibility to request that the court modify or end the guardianship to allow the individual as much autonomy and decision-making power as possible while continuing to ensure their well-being.

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