



Maximizing Autonomy: Guardianship & Less Restrictive Alternatives

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MLPB
ADVANCING HEALTH
THROUGH JUSTICE

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ADVANCING HEALTH THROUGH JUSTICE

Care should systematically account for people's legal rights, risks and remedies; and empower care teams as strengths-based, role-aligned partners in problem-solving.

MLPB equips communities of care with legal education and problem-solving insight that fosters prevention, health equity and human-centered system change. Through training, consultation/telementoring and technical assistance, we help teams and organizations more effectively connect people to the resources and legal protections they seek. This work is embodied in our team-facing legal partnering framework and in our *Unlocking Access* capacity-building suite.



Disclosures

Session presenters have no financial relationships with a commercial entity producing healthcare-related products used on or by patients.

If CME credits are offered, all relevant financial relationships of those on the session planning committee have been disclosed and, if necessary, mitigated.

Learning Objectives

Recognize

how to obtain Guardianship of a person in the limited circumstances where they are unable to make any decisions for themselves.

Identify

less restrictive tools that can be used to preserve the autonomy of a person who needs limited assistance.

Apply

role-aligned and caregiving problem-solving strategies in partnerships with individuals, families, and communities.



Unauthorized Practice of Law

MLPB is here to educate you about some legal rights and remedies available to people and populations, and to strengthen your problem-solving toolbox, **not to turn you into lawyers!**

- **DO** relay general information about the law
- **DO** connect people to resources
- **DO** help people apply for benefits (SNAP, Social Security, etc.)
- **DO NOT** provide advice about an ongoing or potential court case

Help people understand what they **CAN** do

... not what they **SHOULD** do

The unauthorized practice of law is a crime!



Language of the Law

- Not humanistic
- Highly technical
- Stigmatizing
- Antiquated



What happens when a minor child with disability turns 18?

They have full legal rights and are presumed to have legal capacity until a court says otherwise.

This means they can:

- Vote
- Contract
- Marry*
- Work full time
- Make independent financial decisions
- File Taxes
- Consent/decline medical treatment
- Choose where to live
- Be criminally liable as an adult
- Get a tattoo
- Sue/Be sued



What is “legal incapacity”?

- Inability to **receive** and **evaluate** information
- Or inability **to make** decisions
- Or inability **to communicate** decisions
- Which makes them unable to meet essential requirements for **physical health, safety, or self-care**

Tools that Maximize Autonomy

- Joint Bank Accounts
- Representative Payees
- Special Needs Trusts
- Powers of Attorney for Healthcare or Legal
- Supported Decision-Making Agreement

-
- Housing Supports
 - Home Based Services
 - MOLST



Joint Bank Accounts

Pros

- Shared privileges
- Avoid fraudulent activity
- Monitor
- Pay bills

Cons

- Rights of Survivorship
- Creditors
- Trust





Representative Payee

Payees are

- Person or organization appointed by SSA to receive and manage benefits.

Payees Must

- Use benefits to pay for basic needs
- Properly save unused benefits
- Keep records of expenses.
- Provide accountings to the SSA



Durable (or limited) Power of Attorney

- Person selects an attorney-in-fact to make their financial decisions when they become incapacitated
- Attorney-in-fact must be a competent adult
- Can give limited or general powers
- Revoked in writing or when a new POA is created



Key Resource: Plan of MA and RI



Preserve Assets | Protect Benefits | Live Well


Special Needs Trust

- Savings account for the necessities of someone receiving means-tested benefits (e.g., SSI or Medicaid)
- Trustee makes the financial decisions
- Necessities (e.g., dental care, transportation, clothing) and quality of life enhancements (e.g., gym membership, haircut, recreational activities)



Durable Power of Attorney for Health Care

- Patients over the age of 18 who are legally competent select an “healthcare agent”
- DPOA can make decisions only takes affect when an MD determines the patient is incapacitated
- Revocation by giving written (or oral) notice to the physician or creating a new DPOA



3/2018

Durable Power of Attorney for Healthcare Statutory Form

WARNING TO PERSON EXECUTING THIS DOCUMENT

This is an important legal document which is authorized by the general laws of this state. Before executing this document, you should know these important facts:

You must be at least eighteen (18) years of age and a resident of the state for this document to be legally valid and binding.

This document gives the person you designate as your agent (the attorney in fact) the power to make healthcare decisions for you. Your agent must act consistently with your desires as stated in this document or otherwise made known.

Except as you otherwise specify in this document, this document gives your agent the power to consent to your doctor not giving treatment or stopping treatment necessary to keep you alive.

Notwithstanding this document, you have the right to make medical and other healthcare decisions for yourself so long as you can give informed consent with respect to the particular decision. In addition, no treatment may be given to you over your objection at the time, and healthcare necessary to keep you alive may not be stopped or withheld if you object at the time.

This document gives your agent authority to consent, to refuse to consent, or to withdraw consent to any care, treatment, service, or procedure to maintain, diagnose, or treat a physical or mental condition. This power is subject to any statement of your desires and any limitation that you include in this document. You may state in this document any types of treatment that you do not desire. In addition, a court can take away the power of your agent to make healthcare decisions for you if your agent:

- (1) Authorizes anything that is illegal,
- (2) Acts contrary to your known desires, or
- (3) Where your desires are not known, does anything that is clearly contrary to your best interests.

Unless you specify a specific period, this power will exist until you revoke it. Your agent's power and authority ceases upon your death except to inform your family or next of kin of your desire, if any, to be an organ and tissue owner.

You have the right to revoke the authority of your agent by notifying your agent or your treating doctor, hospital, or other healthcare provider orally or in writing of the revocation.

Your agent has the right to examine your medical records and to consent to their disclosure unless you limit this right in this document. This document revokes any prior durable power of attorney for healthcare.

You should carefully read and follow the witnessing procedure described at the end of this form. This document will not be valid unless you comply with the witnessing procedure.

If there is anything in this document that you do not understand, you should ask a lawyer to explain it to you.

Your agent may need this document immediately in case of an emergency that requires a decision concerning your healthcare. Either keep this document where it is immediately available to your agent and alternate agents or give each of them an executed copy of this document. You may also want to give your doctor an executed copy of this document.

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Supported Decision Making Agreement

- Agreement made by an adult who needs help with making decisions
- Supporter is a person or team to help with decision making.
- Aids in gathering and assessing information; making informed decisions, and communicating decisions
- Supporter does not substitute as the decision-maker

Disability Rights RHODE ISLAND

Rhode Island

SAMPLE SUPPORTED DECISION-MAKING AGREEMENT

Section 1: Appointment of Supporter/s and Types of Decisions

I, _____ (insert your name), make this agreement of my own free will.

I agree and designate that:

Name:

Address:

Phone Number:

E-mail Address:

is my supporter.

My supporter may help me with making everyday life decisions relating to the following:

1 Y/N Obtaining food, clothing, and shelter

2 Y/N Taking care of my health

3 Y/N Other (specify):

I agree and designate that: Name

Phone Number:

is my supporter.

Address:

E-mail Address:

[Note: The following people cannot be your supporter: (1) A person who is your employer or employee unless the person is your immediate family member; (2) A person directly providing paid support services to you, unless the person is your immediate family member; and (3) An individual against whom you have obtained an order of protection from abuse or an individual who is the subject of a civil or criminal order prohibiting contact with you.]

Supported Decision Making Agreement

Supporters can't be:

- The adult's employer or employee unless it is an immediate family member
- A person who provides direct services to the adult unless it is a family member, or
- A person who the adult has a protective order against





Your patient is 19 and has a diagnosis of Duchenne Muscular Dystrophy. Last year, patient was in better health and signed a Supported Decision-Making Agreement and created a power of attorney for healthcare and a separate one for legal. They are now rapidly deteriorating with severe neurological symptoms that are impacting judgement and behavior.

Does the patient now require a guardian?

- A. Yes, because they have advance MD and neurological decline.
- B. No, so long as they signed a durable power of attorney for healthcare.
- C. No, so long as they signed a valid durable power of attorney for healthcare and a power of attorney.
- D. Probably not if they signed a valid durable power of attorney for healthcare and a power of attorney.



Patient is 17 and has down syndrome. They have an IEP and plans on attending college when they graduate.

TRUE or FALSE:

When the child turns 18, Parent must obtain guardianship in order to continue their participation in their child's IEP meetings.

False!

What is Adult Guardianship?

A legal process to appoint a substitute decision maker for an adult who lacks capacity.

- **Guardian** (Petitioner)- a person who has been appointed by the court to be a substitute decision-maker
- **Ward** (Respondent)- a person who has been deemed by court in need of a guardian
- **Probate Court** - a municipal court with jurisdiction to hear guardianship petitions



Guardianship Process Overview

Petitioner gets a BCI
Decision Making Assessment Tool
is completed
Petitioner completes the Adult
Guardianship Petition

Pre-Court

Notices are sent to the
Respondent and their family
Guardian Ad litem interviews the
Respondent + Petitioner and
submits a report to the court

Before the Hearing

After Court

Filing

Petitioner submits -
Adult Guardianship Petition
DMAT
BCI
Court and publication fees


Hearing

Judge assesses the submitted
documents, hears objections and
makes decisions

Care Team Documentation: Decisions Making Assessment Tool

- Must be signed by the prospective ward's treating physician
- Other people who know the Ward professionally or personal can submit a DMAT

Available online: RI Secretary of State, Probate Forms

 <p>State of Rhode Island Probate Court</p>	<p>DECISION-MAKING ASSESSMENT TOOL (FOR LIMITED GUARDIANSHIP OR GUARDIANSHIP) <i>RIGL 33-15-4 & RIGL 33-15-47</i></p>	<p>DATE FILED <small>FOR COURT USE ONLY</small></p>
<p>STATE OF RHODE ISLAND</p> <p>County of <u>Select County</u></p> <p>Estate of _____</p> <p>Alias _____</p>	<p>PROBATE COURT OF THE</p> <p>City or Town of <u>Select City or Town</u></p> <p>No. _____</p>	
<p>Name of Individual Being Assessed _____</p> <p>Current Street Address _____</p> <p>City/Town _____ State _____ Zip Code _____ Phone Number _____</p> <p>Permanent Address (if different)</p> <p>Street Address _____</p> <p>City/Town _____ State _____ Zip Code _____ Phone Number _____</p>		
<p style="text-align: center;"><u>Instructions for Completion</u></p> <p>This document will be used by a Probate Court to determine whether to appoint a guardian to assist this individual in some or all areas of decision-making.</p> <p>This document has two parts. Please first complete the part which is right after these instructions, titled Assessment. Then complete the second section, titled Summary.</p> <p>To a physician completing this document: The individual's treating physician must complete this document. If there is any information of which the treating physician does not have direct knowledge, he or she is encouraged to make such inquiries of such other persons as are necessary to complete the entire form. Those persons might include other medical personnel such as nurses, or other persons such as family members or social service professionals who are acquainted with the individual. If the physician has received information from others in completing this form, the names of those individuals must be listed on the Summary.</p> <p>To a non-physician completing this document: Professionals or other persons acquainted with the individual being assessed may also complete this document. If there is information of which a non-physician does not have knowledge, such non-physician may either leave portions of the document blank, or also make inquiries or do such investigation as is necessary to complete the document. Again, the names of any individual from whom information is derived should be listed on the Summary.</p> <p>The document must be signed and dated by the person completing it. It does not need to be notarized.</p>		

Care Team Documentation: DMAT

- Diagnosis and Prognosis
- Medications and impact on decision-making
- Nutritional status
- Psychological Assessment
- Social Assessment
- Summary

D. SUMMARY	
I hereby certify that I have reviewed Sections A, B, and C attached hereto and based on such assessments that the individual's decision-making ability is as follows:	
1. Please describe as fully as you can the individual's decision-making ability in each of the following areas:	
A. FINANCIAL MATTERS: _____ _____	
B. HEALTH CARE MATTERS: _____ _____	
C. RELATIONSHIPS: _____ _____	
D. RESIDENTIAL MATTERS: _____ _____	
2. Please indicate your opinion regarding whether the individual needs a substitute decision-maker in any of the following areas (Check one for each category. If you check "limited" for any category, please explain.):	
A. FINANCIAL MATTERS	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Limited _____
B. HEALTH CARE MATTERS	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Limited _____
C. RELATIONSHIPS	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Limited _____
D. RESIDENTIAL MATTERS	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Limited _____
E. OTHER: (if there are other areas in which you think the individual lacks decision-making ability or has limited decision-making ability, please explain)	

Name of Physician (Print or Type) _____ Title _____	
Signature _____ Date _____	
Name of Non-Physician (Print or Type) _____ Title _____	
Signature _____ Date _____	
Names and titles of other who assisted in preparation of this Assessment:	
Name _____	Title _____
_____	_____
_____	_____



True or False

Guardianship always grants the guardian the authority to make decisions in **all aspects** of the incapacitated adult's life.

False

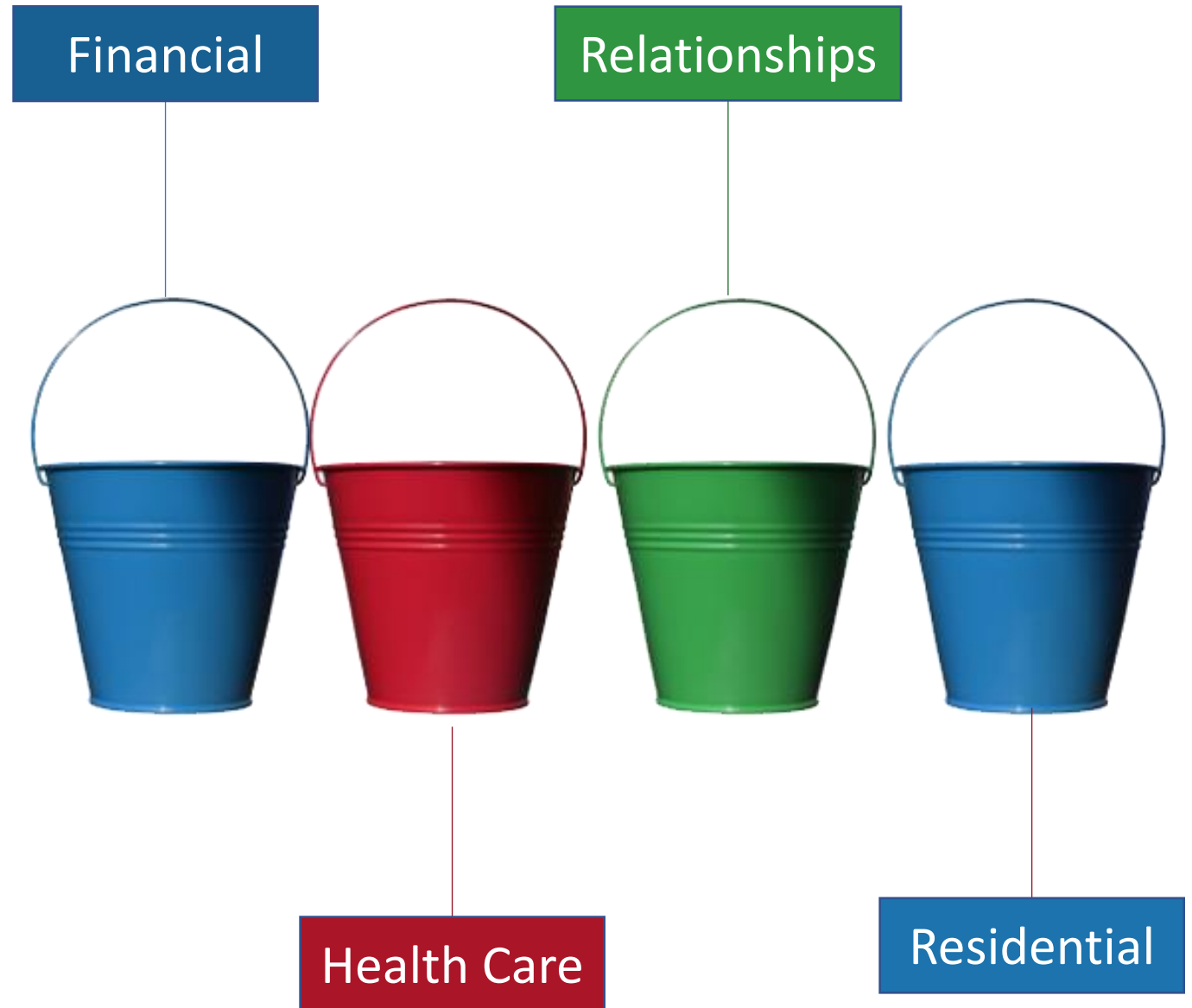
Scope of Guardianship

Limited guardianships can be awarded based on the need of the Individual

Care teams should know what the guardian has authority to know and decide.

When in doubt:

- Ask for a copy of the court order
- Use internal risk-management protocols to assess validity



Guardians Annual Obligations

State of Rhode Island
Probate Court

ANNUAL STATUS REPORT
RIGL 33-15-26.1 & RIGL 33-15-47

DATE FILED
FOR COURT USE ONLY

STATE OF RHODE ISLAND

County of **Select County**

Estate of _____

Alias _____

PROBATE COURT OF THE

City or Town of **Select City or Town**

No. _____

1. The residence of the ward is:

Name of Ward _____

Current Street Address _____

City/Town _____ State _____ Zip Code _____ Phone Number _____

2. The medical condition of the ward is:

3. I perceive the following changes in the decision-making capacity of the ward:

4. The following is a summary of the actions I have taken and decisions I have made on behalf of the ward during the last year:

You may provide additional attachments, if necessary.

Name of Guardian _____

Signature of Guardian _____ Date _____

Notary:

Name of Notary _____ State _____ County _____

On _____ day of _____, 20_____, the above named Guardian, personally appeared and made oath to faithfully and impartially perform the duties of the foregoing appointment.

Signature of Notary Public _____ Date _____

Commission ID# _____ Commission Expiration Date _____ Notary Seal _____

Succession Planning

Care teams can help caregivers think about the planning to support an adult's continuity of care:

Plan component examples:

- Transfer the guardianship to another person
- Create a co-guardianship
- Share information with new guardian
- Increasing services and case management
- Consider Shared living Programs



Key Guardianship Resources

Disability Rights RI Guardianship booklet:

ripin.org/ripin/wp-content/uploads/2020/08/HANDOUT-RIDLC-Guardianship-and-Alternatives-to.pdf

Disability Rights RI Supported Decision Making Agreement

drri.org/supported-decision-making/

Special Needs Trusts

Plan of MA and RI
planofma-ri.org

SSA Representative Payee Program

www.ssa.gov/payee/

RIDOH Advance Directives

(includes DPOA for Healthcare)
health.ri.gov/lifestages/death/about/advancedirectives/

RI Office of the Mental Health Advocate:

(401) 462-2003

RI Bar Association Handbook for Seniors

ribar.com/page.aspx?id=150

Advocates in Action

advocatesinaction.org