



SUPPORTED DECISION-MAKING AS AN ALTERNATIVE TO GUARDIANSHIP

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WHO WE ARE

- GAO is the Independent, Federally Mandated Protection and Advocacy Program for People with Disabilities in Georgia.
- GAO envisions a Georgia where all people have value, visibility, and voice; where even the most difficult and long-lasting challenges are addressed by ordinary citizens acting voluntarily on behalf of each other; and where the perception of disability is replaced by the recognition of ability.

WHAT WE DO

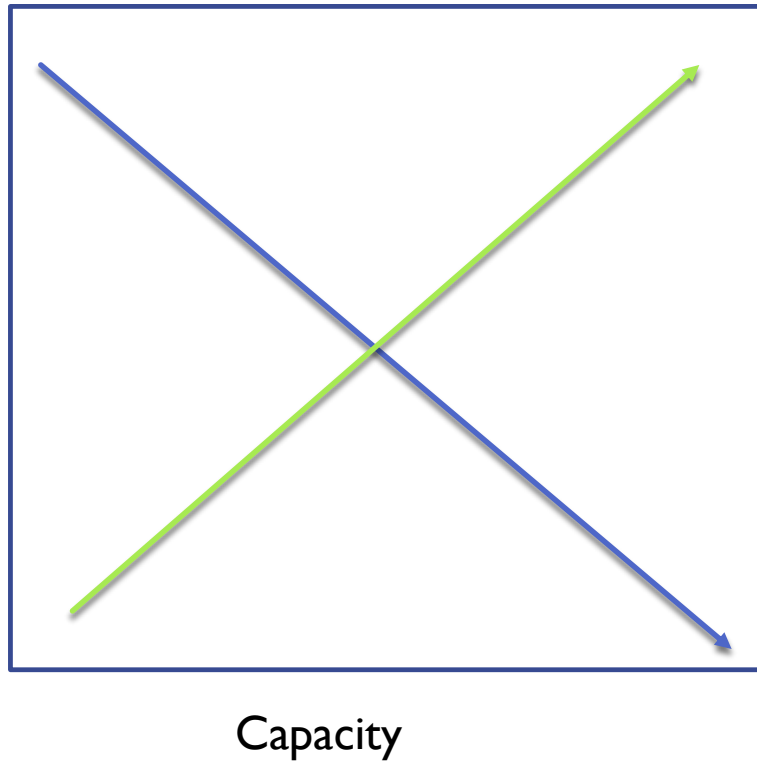
- Protection from Abuse and Neglect
- Nursing Facility Transition to the Community
- Assistive Technology
- Housing
- Supporting Self-Advocacy
- Voting
- Employment
- Information and Referral

A NEW WAY OF THINKING

“Capacity assessments should primarily be undertaken not to judge whether people are capable decide ‘autonomously’ but rather to assess what kind of support people with decision-making disabilities need in order to be involved in decision-making and thus to promote their autonomy.”

(Pesiah et al, 2013)

A BALANCING ACT



- Capacity is Fluid
- Support should be responsive
- Support should be transparent
- Support should be beneficial
- Support should be efficient

GUARDIANSHIP AS A LAST RESORT

- O.C.G.A. 29-4-1(4)(f): All guardianships ordered pursuant to this chapter shall be designed to encourage the development of maximum self-reliance and independence in the adult and shall be ordered only to the extent necessitated by the adult's actual and adaptive limitations after a determination that less restrictive alternatives to the guardianship are not available or appropriate.

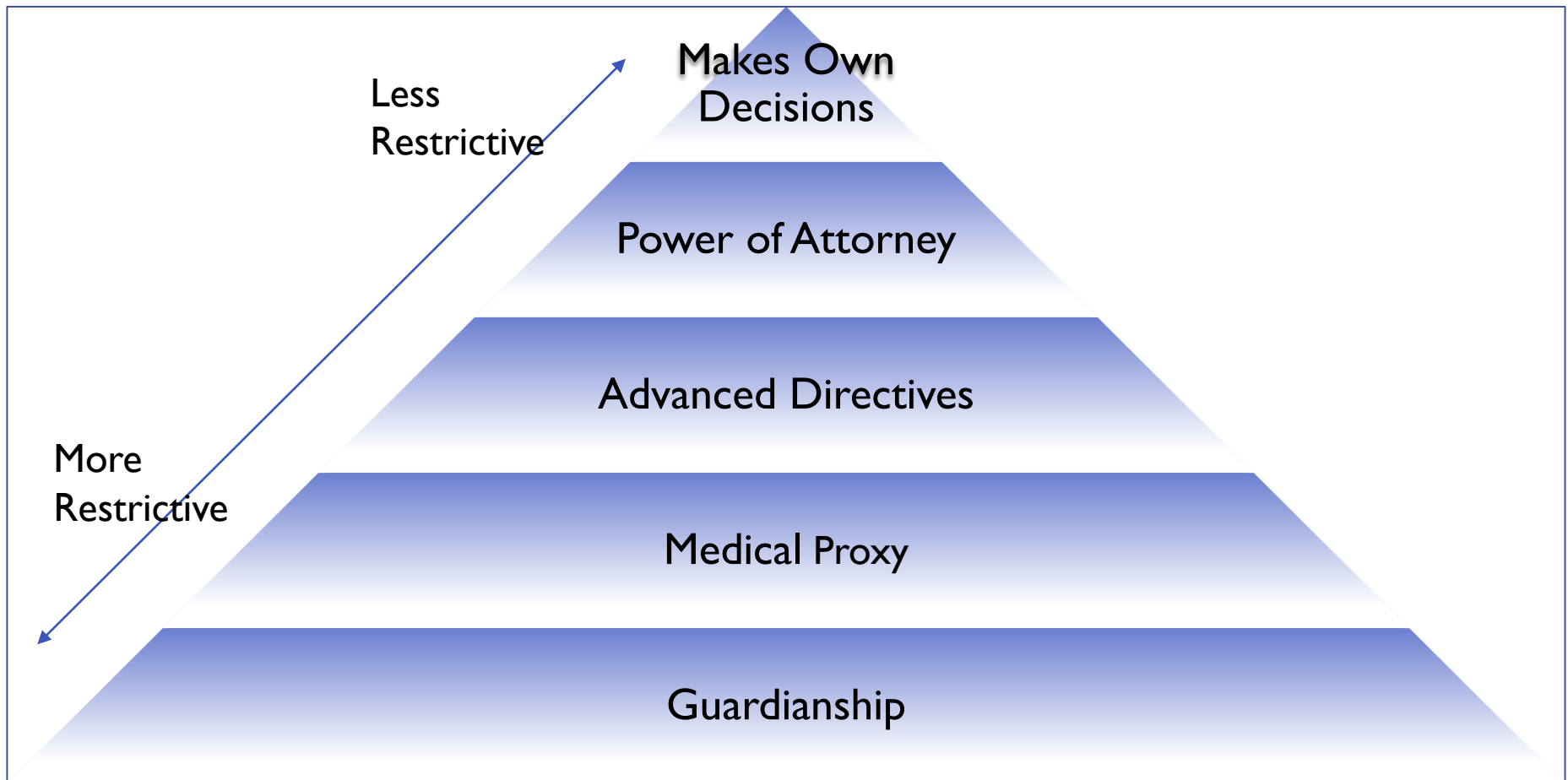
BRAINSTORM SESSION

WHY DO PEOPLE SEEK GUARDIANSHIP?

BRAINSTORM SESSION PART II

**WHAT LEGAL STRATEGIES
ALREADY EXIST THAT MAY
ACCOMPLISH THOSE GOALS?**

DECISION-MAKING OPTIONS



POWER OF ATTORNEY

- A Power of Attorney (POA) is a legal document that gives one adult legal authority to act for another adult.
- The person giving the authority is called the “principal.”
- The person who is given the the authority to make decisions on behalf of the principal is called the “agent.”
- The person giving the authority, the agent, can give as little or as much power as they want to give to the principal.
- A POA can cover tasks like writing and signing checks to more complex matters likes selling a person’s home or property.
- A Power of Attorney becomes a Durable Power of Attorney (DPOA) when it states that the agents power continues when the principal is unable to communicate his or her wishes.

ADVANCED DIRECTIVE FOR HEALTHCARE

- A person can name someone as an agent to make healthcare decisions.
- It can also include statements of the person's wishes concerning medical treatment.
- A healthcare agent may consent to or participate in discussion concerning two other kinds of advance care planning documents.
 - Do Not Resuscitate (DNR) Order directing a physician not to perform life saving resuscitation if a person's breathing or heart stops;

GEORGIA ADVANCE DIRECTIVE FOR HEALTH CARE

Purpose:

In recognizing the right of individuals to (1) control all aspects of his or her personal care and medical treatment, (2) insist upon medical treatment, (3) decline medical treatment, or (4) direct that medical treatment be withdrawn, the General Assembly has in the past, provided statutory forms for both the living will and durable power of attorney for health care. To help reduce confusion, inconsistency, out-of-date terminology, and confusing and inconsistent requirements for execution, and to follow the trend set by other states to combine the concepts of the living will and health care agency into a single legal document, the efforts of a significant number of individuals representing the academic, medical, legislative, and legal communities, state officials, ethics scholars, and advocacy groups produced the development of a consolidated advance directive for health care. This newly created form using understandable and everyday language is meant to encourage more citizens of Georgia to voluntarily execute advance directives for health care to make their wishes more clearly known.

The General Assembly takes note that the clear expression of individual decisions regarding health care, whether made by the individual or an agent appointed by the individual, is of critical importance not only to citizens but also to the health care and legal communities, third parties, and families. In furtherance of these purposes, the General Assembly enacted a new Chapter 32 of Title 31. This Chapter sets forth general principles governing the expression of decisions regarding health care and the appointment of a health care agent, as well as a form of advance directive for health care.

(July 07)



MEDICAL PROXY

- **Georgia Consent Law**

- A. Any person authorized to give consent for the adult under an Advanced Directive or Power of Attorney.
- B. A Spouse
- C. An Adult Child or a Majority
- D. A Parent
- E. An Adult Sibling
- F. Grandparent for Grandchild
- G. Adult Grandchild for Grandparent
- H. Adult niece, nephew, aunt, uncle (first degree)
- I. Adult Friend

RETHINKING GUARDIANSHIP

Georgia Guardianship Law: Pre-Requisites for Guardianship

- (a) The court may appoint a guardian for an adult only if the court finds the adult lacks sufficient capacity to make or communicate significant responsible decisions concerning his or her health or safety.
- (b) No guardian, other than a guardian ad litem, shall be appointed for an adult except pursuant to the procedures of this chapter.
- (c) No guardian shall be appointed for an adult unless the appointment is in the best interest of the adult.
- (d) No guardian shall be appointed for an adult within two years after the denial or dismissal on the merits of a petition for the appointment of a guardian for that adult unless the petitioner shows a significant change in the condition or circumstances of the adult.
- (e)(I) No adult shall be presumed to be in need of a guardian unless adjudicated to be in need of a guardian pursuant to this chapter.

O.C.G.A. 29-4-1

WHAT IS LOST WITH GUARDIANSHIP?

- Right to contract
- Marriage & reproductive rights
- Place of residence & travel
- Association
- Healthcare decisions
- Financial decisions

UNINTENDED CONSEQUENCES OF GUARDIANSHIP

- Feeling hopeless, **helpless**, and self-critical.
- Experiencing **low self-esteem**, passivity, and feelings of inadequacy and incompetency.
- Overbroad or undue guardianship can cause a **significant negative impact** on physical and mental health, longevity, and ability to function.
- It is difficult to restore rights once a Guardianship Order is issued.

RISKS AND IMPACTS OF GUARDIANSHIP

- People who are subjected to guardianship are seen as:
 - Unable to work
 - Unable to live on their own
 - Unable to be in loving relationships
 - Unable to make health care decisions
- People who are subjected to guardianship are also:
 - Denied the “dignity of risk” – opportunity to try new things, to test limits, to discover capabilities that they never knew they had.
 - Their lives often become smaller and more isolated as a result.
 - It is difficult to restore rights once a Guardianship Order is issued.

A CONSIDERATION

Guardianship has the most severe and restrictive impact on a person's rights, so why would that be the first step we take?

SUPPORTED DECISION-MAKING

- Supports and services that help an adult with a disability make his or her **own decisions**, by using friends, family members, professionals, and other people he or she trusts to:
 - **Help understand** the issues and choices;
 - **Ask questions**;
 - **Receive explanations** in language he or she understands; and
 - **Communicate** his or her wishes to others.

(See, e.g., Blanck & Martinis 2015; Dinerstein 2012; Salzman 2011)

SUPPORTED DECISION-MAKING CAN HELP DETERMINE *WHEN & HOW*

When do I need Support?

- Budgeting
- Health care
- Living Arrangements
- Choosing Supporters

Strategies for Support

- Understand information
- Focus attention in decision-making;
- Identify options and choices
- Ensure that decisions are based on the person's own preferences;
- Interpret and/or communicate decisions to other parties.

(Salzman, 2011)

SUPPORTED DECISION MAKING AGREEMENTS

- Written agreements identifying the support needed and who will give it.
- Supported Decision Making has not been finalized in Georgia, however, it does not prevent a person from providing it to the Court as an informal alternative to guardianship.



ALL FORMS OF SUPPORTED DECISION- MAKING RECOGNIZE:

- The person's autonomy, presumption of capacity, and the right to make decisions on an equal basis with others;
- That a person can take part in a decision-making process that does not remove his or her decision-making rights; and
- People will often need assistance in decision-making through such means as interpreter assistance, facilitated communication, assistive technology, and plain language.

(Dinerstein, 2012)

WHY SUPPORTED DECISION MAKING?

“Supported Decision-Making has the potential to increase the self-determination of older adults and people with disabilities, encouraging and empowering them to reap the benefits from increased life control, independence, employment, and community integration.”

(Blanck & Martinis, 2015)

WHY SUPPORTED DECISION MAKING?

▶ **Increases Self-Determination**

- ▶ Life control — People’s ability and opportunity to be “causal agents . . . Actors in their lives instead of being acted upon”

- ▶ (Wehmeyer, Palmer, Agran, Mithaug, & Martin, 2000, p. 440)

▶ **People with greater self-determination are:**

- ▶ More independent
- ▶ More integrated into their communities
- ▶ Healthier
- ▶ Better able to recognize and resist abuse

(Powers *et al.*, 2012; Shogren, Wehmeyer, Palmer, Rifenbark, & Little 2014; Wehmeyer & Shwartz, 1997 & 1998; Wehmeyer & Palmer, 2003; Khemka, Hickson & Reynolds 2005; Wehmeyer, Kelchner, & Reynolds 1996)

FINAL THOUGHTS

- Every person should be part of every decision about his or her life.
- We all need help making decisions.
- People with disabilities may need more or different help, but should be supported to exercise their right to make choices in their own lives.

HOW CAN YOU FACILITATE SUPPORTED DECISION MAKING?

- Add **choice and control** into people's lives.
- Create opportunities to **practice, practice, practice** making smaller decisions then build to more consequential decisions.
- Suggest adopting Supported Decision Making as a practice.
- Use the alternatives that currently exist.
- Use The PRACTICAL Tool

WHAT TO LEARN MORE?

- Sign up for Supported Decision Making News
- Plan to attend the SDM Symposium October 17th 2019
- Visit www.supporteddecisionmaking.org

RESOURCES

- National Resource Center for Supported Decision Making:
 - <http://www.supporteddecisionmaking.org>
- Sample Supported Decision Making Agreements:
 - <http://www.supporteddecisionmaking.org/sites/default/files/sample-supported-decision-making-model-agreements.pdf>
- PRACTICAL Tool for Lawyers
 - https://www.americanbar.org/content/dam/aba/administrative/law_aging/PRACTICALGuide.pdf
- Friends Manual: A Guide for Connecting People with Disabilities and Community Members*
- <http://www.rtc.umn.edu/friends>