

Guardianship and Mental Illnesses



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What is guardianship?

Guardianship is a legal process where an adult (guardian) is chosen to make legal decisions for another person (ward). Guardianship is used when a person cannot make decisions or care for themselves. A guardian is appointed by a court. A guardian can be a friend, family member, or paid professional.

How does guardianship work?

A court gives the guardian power to make decisions for the ward. There are different types of guardianship. A court decides which decisions a guardian can make. A guardian's powers can include deciding where the ward lives, managing the ward's belongings, making medical decisions, and supervising the ward.

Guardianship is a legal process. You don't need an attorney, but many people choose to work with one. The process is difficult. Sometimes a court is more likely to appoint a guardian for a person with a mental illness when they are young (such as when they are about to turn 18) than when they are older.

When is guardianship needed?

Guardianship is for people who cannot make decisions even with the support and assistance of others. There must be proof that the person cannot meet their own needs for medical care, food, clothing, shelter, and safety. Symptoms of mental illnesses can come and go, along with the ability to make decisions. This makes it difficult for a court to decide whether a person needs a guardian.

Guardianship should not be a first step. Having a guardian can make someone feel powerless. It takes away their independence. Sometimes people believe that guardianship will fix problems during a mental health crisis or will prevent a mental health crisis. However, guardianship often does not fix these problems. Guardians can agree to a hospital admission if it is ordered by a physician, but guardians cannot force someone to take medication. Only a court order can require a person to take medicine involuntarily. Guardianship is not a way to force a loved one to obtain mental health treatment involuntarily.

What if a guardian is doing a poor job?

If the ward or family members feel that the guardian is not doing a good job, the first step is to talk to the guardian or an ombudsman. If the situation does not get better, they can ask the court to stop the guardianship. They can also ask the court to appoint a different guardian.

A court can change a guardian's power if the ward's situation changes. A court can also stop guardianship if the ward recovers enough to care for themselves or accept the help of others.

What are alternatives to guardianship?

There are lots of ways to support a person living with a mental illness. For example, a person who cannot make decisions about money may want a representative payee. A power of attorney is another way to help someone manage their money.

Supported Decision Making is another option. In Supported Decision Making, a person chooses people to be on their "team." The team can include family, caregivers, or other important people. The team helps the person

make decisions without a court. An advance healthcare directive or advance psychiatric directive are also options instead of guardianship.

The best way to decide about guardianship is to talk to the individual, family members, care givers, and other people who are close to the person.

Where can I find more information?

Visit the Volunteers of America MN website at www.voamnwi.org/protective-services. You can also call the Volunteers of America Guardianship Information Line at 952-945-4174 or 884-333-1748.

Visit the Minnesota Judicial Branch website at <http://www.mncourts.gov/Help-Topics/Guardianship-and-Conservatorship.aspx>. You can find more information about guardianship, including forms.

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