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Supporting Guardians and the People They Serve

The Law: Legally Ensured protections

Guardianship (also called Conservatorship in some states) is a legal process whereby an individual (“guardian”) is appointed by a court to make decisions regarding major life decisions (as defined in state law) such as medical care, living arrangements, and financial management on behalf of a person (“ward”) who lacks the ability to comprehend and do those things for him/herself (*Parent Association for the Retarded of Texas*, 2010).

The legal process ensures that people who are unable to make decisions for themselves (e.g., due to profound intellectual disabilities) are protected from being exploited, abused, or neglected. The guardian’s authority reaches only as far as necessary (and only as long as necessary), based on the individual’s specific competencies, and can be limited to guardianship of the person or guardianship of the estate (finances), as appropriate. Guardians who abuse their authority are removed.

At least annually, guardianship appointments and activities are judicially reviewed. Only guardians who have consistently acted in their ward’s best interests remain as guardians.

Under Attack: Families as Guardians

There is an aggressive push by some advocates, state officials and professionals against the appointment and retention of family members as guardians for individuals with intellectual disabilities, favoring instead no guardianship or paid corporate guardians. In one state, personnel for the Department of Developmental Services have told families and others that “guardianship by a family member or someone close to the individual is not needed and in fact a detriment to the individual with ID/DD . . . because of emotional ties.”

Anti-facility advocates are especially motivated to marginalize family decision making; family members are formidable adversaries when the objective is to displace individuals from facility-based living. Advocacy against guardianship is also sometimes based on the misguided, potentially dangerous, notion that all individuals with intellectual disabilities, no matter the severity, deserve the right to “self determine” care, medical, and other decisions.

Individuals with profound intellectual disabilities have the cognitive ability of infants or small children. These individuals need the protection of legally-appointed guardianship arrangements, preferably by a family member or another individual who is familiar with an individual’s unique needs.

Expanding Guardianship Protections

Even as some advocates work to prevent guardianships, or remove existing guardians, there are individuals with profound intellectual disabilities across the country who are in desperate need for a guardian’s advocacy and support. Some family advocacy organizations have attempted to meet these needs by helping to identify individuals who are willing to serve as guardians to a small number of individuals. In other examples, cooperative judges have set aside time to consider several guardianship petitions on the same day to reduce overall costs associated with these proceedings.

These and other novel approaches to ensuring that every person who would benefit from a guardian advocate are applauded and must be expanded throughout the country. Guardians offer individuals with profound intellectual disabilities protection against abuse and exploitation.