

DECISION-MAKING TERMS AND DEFINITIONS

Supported Decision-Making: The most common type of decision-making for all adults, supported decision making refers to the informal process of building and using a team of people to help the individual make decisions. This may be a spouse, family member, support provider, community member, etc. As of late, many people have chosen to produce a formalized Supported Decision-Making Agreement to help memorialize the support plan discussed. Some forms of financial supported decision-making agreements utilize trusts or banking services.

APD Client Advocate: A client advocate is a person designated to assist and clarify any support plan services chosen by the APD client. Client advocates must complete an APD designation form, and are not allowed access to HIPAA-protected information, or to make decisions on behalf of the person.

Power of Attorney (POA) and Durable Power of Attorney (DPOA): A Power of Attorney is a legal document that authorizes one person to act on behalf of another. A Power of Attorney can be rescinded by the person at any time. A Durable Power of Attorney can also be rescinded at any time; however, in the event that a person becomes incapacitated, the Durable Power of Attorney remains in place. POAs and DPOAs take effect as soon as the document is executed. POAs and DPOAs can be used for property, medical, or any other wishes of the person noted in the document.

Living Will: A living will is an oral or written statement signed in front of two witnesses that denotes the person's wishes regarding life-prolonging procedures and expresses any spiritual, personal, or emotional wishes. A living will becomes effective when a person loses the ability to express a decision in the event of 1) end-stage condition of a disease; 2) terminal illness; or 3) persistent vegetative state.

Health Care Surrogate: A health care surrogate is a document which names an individual that a person chooses to make health care decisions in the event that the person becomes incapacitated. The surrogate form must be signed in front of two witnesses in advance, while the person still has capacity. A health care surrogate can make decisions about health care, public benefits, end-of-life decisions, medical records access, medical treatments, admission and discharge from health care facilities, organ donation, and APD services; however, a health care surrogate form does not go into effect until a physician determines that the person is incapacitated, unless the health care surrogate form states otherwise.

Representative Payee: A representative or "rep" payee is an individual appointed by the Social Security Administration (SSA) to manage federal benefits on behalf of another person. Rep payees are responsible for ensuring the proper management and disbursement of social security benefits are carried out on behalf of an individual.

Medical Proxy: A medical proxy is a person authorized to make medical decision when a doctor has determined that the person does not have the capacity (or has a developmental disability) and no other advance directive is in place. Florida law lists the order of priority for whom may serve as the medical proxy, and the proxy is given the same rights to execute decisions on behalf of a person as the health care surrogate, listed above. *Sec. 765.401, Fla. Stat.*

Guardian Advocacy: Guardian advocates under Ch. 393, Fla. Stat., are persons appointed to make decisions on behalf of a person with a developmental disability, as determined by the court. A guardian advocate may make decisions on health needs, finances, property, social arrangements, residence, benefits, and APD services, *only if* the court has delegated that right to guardian advocate. The guardian advocate statute does not label a person incapacitated, and as such, the person must be able to exercise at least one right.

Guardianship: The most restrictive form of decision-making assistance, guardianship, as defined in Ch. 744, Fla. Stat., requires that an examining committee of three professionals, one of whom must be a physician, evaluates a person to determine their level of capacity. If a person is determined to be incapacitated, a lengthy and often expensive court process requires that a guardian and the incapacitated person, called a "ward," participate in court proceedings to determine what decision-making rights, if any, the person can exercise without the assistance of a guardian. The guardian, who is appointed by the court, is required to retain an attorney for the duration of the guardianship and must report to the court annually, be subject to legal fees, and meet all the requirements for a guardian set forth in statute.

Types of Guardians

Family (Non-Professional Guardian): A non-professional guardian, often referred to as a "family guardian," is a person who serves as guardian for no more than 3 people, often related to the guardian. A family guardian is required to have a criminal background check, complete an 8-hour course approved by the court, retain an attorney, and meet all requirements under Ch. 744, Fla. Stat.

Professional (Non-Public) Guardian: A professional (non-public) guardian is a person or agency who serves as guardian for more than 3 people, often not related to the professional guardian. A professional guardian must complete a 40-hour training course, 16 hours of continuing education bi-annually, complete a Level 2 background screening, retain a surety bond no less than \$50,000.00, and register with the Office of Public and Professional Guardians (OPPG) annually. Professional guardians are subject to all requirements under Ch. 744, Fla. Stat., and the Standards of Practice rule, 58-M, Fla. Administrative Rules.

Public Guardian: Public guardians are professional guardians subject to all requirements stated above. Public guardians receive state dollars through contracts with the Office of Public and Professional Guardians (OPPG) to serve indigent incapacitated adults with no friends or family who are willing or able to serve, and may serve as guardian advocate. Public guardians are additionally required to meet the terms of contracts negotiated annually with the Department of Elder Affairs.

Types of Guardianships

Guardianship of the Person: Guardianship of the person refers to rights exercised by a guardian, and generally include the rights to determine residence, to consent to medical or mental health treatments, and to make decisions concerning social environment. Some or all of these rights may be delegated to a guardian of the person.

Guardianship of the Property: Guardianship of the property refers to rights exercised by a guardian, and generally include the rights to contract, to apply for government benefits, to sue and defend lawsuits, to manage money and property, or to gift or dispose of assets. Some or all of these rights may be delegated to a guardian of the person.

Plenary Guardianship: Plenary guardianship or “full guardianship” refers to the rights exercised by a guardian, and includes all the rights that can be delegated (for guardianship of the person and property).

Limited Guardianship: Limited or “partial guardianship” refers to some of the rights exercised by a guardian. The rights exercised may be under guardianship of the person or guardianship of the property, or both.

Emergency Temporary Guardianship: Emergency Temporary Guardianship or “ETG” refers to a time-limited guardianship in the event of an emergency. An ETG refers to the rights delegated to the guardian for a set period of time, usually not to exceed 90 days. The rights exercised under an ETG may be under guardianship of the person or guardianship of the property, or both.