

Decisional Supports as Alternatives to Guardianship

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The law in virtually every state says that a guardianship should be the last resort, something to be imposed only when alternatives fail to address the issue, or perceived issue, prompting the push for guardianship. Alternatives can include all means of decisional supports, from informal interactions (like help from a neighbor) to formal legal mechanisms (like powers of attorney). Importantly, though, unlike guardianship, these decision-making supports are person-centered and person-directed—meaning the values, priorities, and wishes of the individual drive the decision-making process. Also, unlike guardianship, decision-making supports are implemented with the consent and cooperation of the older adult and terminable at their direction.

Guardianship cases are too often filed without first exploring the broad range of decisional supports available to older adults. A winning strategy for the defense against guardianship or for the restoration of rights is to develop and present evidence that decisional support mechanisms meet the needs of the person without regard to the person's decisional or functional capability. Preparing and presenting evidence of alternatives is an essential defense strategy that should be explored in every guardianship case.

Informal, Social, and Lifestyle Supports

- **Family, friends, neighbors, community, and religious organizations:** Some of the most readily available support for an older adult is the assistance provided by those who care for and interact with the older adult regularly. These supports can include family members, friends, and neighbors. Assistance might be on an informal basis or in a more organized fashion through a local community or religious group.
- **Congregate and home-delivered meals:** Congregate meal programs provide meals to older adults in group settings, such as senior and community centers, at least once a day. Home-delivered meal programs (like Meals on Wheels) provide meals to older adults in their homes when they are not able to attend congregated meal sites.
- **Housekeeping services:** Older adults can apply through their local agency on aging to receive help with their routine household chores, such as shopping, doing laundry, general house cleaning, preparing meals, and yard work such as mowing grass, raking leaves, pulling weeds, and clearing snow.
- **Day programs:** Senior day care programs are care environments for older adults, especially those with health challenges or disabilities, who are able to reside at home but need assistance or supervision during the day. These programs provide a range of services, such as meals, social activities, medical care, and therapy, depending on the needs and preferences of the clients.
- **Transportation services:** In most communities, transportation services operated by local governments and other providers allow older adults to arrange for transportation to and from medical appointments, shopping centers, and other locations as needed to manage their personal affairs. Ride sharing services and taxi services with online apps are proving helpful for some as the convenience of charging to a card on file eliminates the need for cash or concerns about in-person payment.

- **Delivery services and online shopping:** Delivery services can provide nearly everything a person needs to live without ever leaving home. Most grocery stores now have online ordering and delivery available as do most major retailers. Many consumables can be set to refill, automatically eliminating even the need to remember to reorder.
- **Supported decision-making:** Supported decision-making is a process by which a person selects advisors to support them in decision making. The decisions might involve finances, health care, or anything else. The role of the supporter is to help the person understand the issue in consideration, as well as the options, risks, and benefits. A supporter may help the person make a choice and, as needed, help carry out that choice. The supported decision-making arrangement might be informal or it might be set out in a written agreement. Unless other agreements are created, such as powers of attorney, the supporters have no legal authority to consent for or act on behalf of the person.

Resources

- [Adult Day Programs](#), Eldercare Locator
- [Benefits Checkup](#), National Council on Aging
- [Eldercare Locator](#), U.S. Administration on Aging
- [Finding the Right Fit: Decision-Making Supports and Guardianship](#), Center for Elder and the Courts
- [National Resource Center for Supported Decision-Making](#)
- [Transportation Options for Older Adults and People with Disabilities](#), National Aging and Disability Transportation Center

Financial Supports

- **Trusted person designations:** Many banks and financial institutions allow the account holder to designate a trusted person who the institution can contact if there is an issue with the account or suspected financial exploitation. The designation authorizes the institution to disclose account information to the trusted person and to confirm the account holder's contact information, health status, and the identity of anyone authorized to act on the account holder's behalf.
- **Account with read only access, shared statements/notices:** Banks and other financial institutions can set up "read only" access, allowing a trusted third party to verify that deposits are received in the correct amount and that bills being paid are correct and paid on time. It is also easy to set up a shared email address to receive electronic statements.
- **Debit/credit cards with agreed limits:** Debit and credit cards can be provided with agreed upon limits. Financial institutions may be willing to issue cards with set daily, weekly, or per-transaction limits, as well as limits on the stores and retailers at which the cards can be used. Merchant codes identify the nature of a business, such as grocery stores, jewelry stores, general merchandise, or car repair services. Limiting the codes can reduce the risk of exploitation and misuse of funds.
- **Direct deposit and automated banking:** All Social Security benefits and virtually all retirement benefits are paid by direct deposit. Most other income sources could be received by direct deposit as well. Direct deposit ensures that income is available when needed to pay bills, and it eliminates the need to remember to make deposits, the risk of lost or stolen checks, and the need for frequent trips to the bank. Nearly all reoccurring bills can be set up on automatic payment, including most utility bills, insurance payments, credit card bills, and rent or mortgage payments. Automatic payment, in conjunction with direct deposit, assures the bills are paid on time. Both direct deposit and automatic payment should have some monitoring or oversight like read only access or shared statements.

- **Joint bank accounts and authorized signers:** Joint accounts and authorized signers are ways to add an agent to a bank account to help manage finances. Many married and committed couples hold their accounts jointly. A joint account creates a presumption of ownership in the account assets and may create inheritance rights. The account might also be subject to attachment or garnishment if the joint owner becomes liable on a judgment. Therefore, joint accounts should be used with caution. Alternatively, the account holder can authorize someone to sign on the account without creating an ownership interest. Many business accounts are structured this way. Most banks have their own internal requirements and forms to allow the addition of an authorized signer.
- **Money management and bill pay services:** Money management and bill pay services provide one-on-one assistance with financial management. Once engaged, the service will receive all paper and electronic bills, review and pay the bills, balance the accounts, and maintain all financial records. Some services might assist with creating a budget, gathering and organizing tax documents, and filing insurance claims. These services might be available for free or at a low cost, possibly staffed by volunteers, or they might charge an hourly or monthly fee.
- **Representative payees:** A Social Security representative payee (rep payee) manages the benefits for a beneficiary who has been determined unable to manage money by Social Security. The rep payee program is specific to Social Security benefits, including Social Security Disability and Supplemental Security Income. VA pensions and some private pensions have separate payee systems. If Social Security has reason to believe a beneficiary is unable to manage benefits (usually based on a verification from a physician or evidence in a disability case of serious mental illness or substance abuse), it will place the beneficiary's benefits in payee status. A beneficiary can also request a rep payee. The process is entirely administrative. All rep payees are volunteers except for narrowly defined non-profits who are allowed to receive a limited fee from the benefits. In some states, inpatient residential settings, such as nursing homes, are allowed by state law or regulation to serve as rep payee. Because Social Security does not recognize any other agents, guardians and agents under powers of attorney must apply to Social Security to be recognized as a rep payee.
- **Financial power of attorney:** A power of attorney (POA) for financial matters is a document authorizing an agent to transact business on behalf of the person granting the authority. The authority granted is as described in the document or what is allowed by state law. Increasingly, states have standardized forms for creating a POA that can be used for do-it-yourself planning. These are very powerful documents and should be created with great care.
- **Trusts:** Finances can also be managed through the creation of a trust, a legal entity able to hold property and assets that is managed by a fiduciary (the trustee) for the benefit of the beneficiary pursuant to the instructions in the trust documents. Trusts are typically established to control and manage assets while the person is alive and to provide for distribution of the estate after death.

Resources

- [Can a Family Member or Friend Help Me with Bill Paying and Banking?](#), Consumer Financial Protection Bureau
- [Eldercare Locator](#), U.S. Administration on Aging
- [Identify Someone to Manage Benefits for You](#), Social Security Administration
- [Planning for Diminished Capacity and Illness](#), Consumer Financial Protection Bureau
- [Planning for Peace of Mind: Social Security Advance Designation](#), Consumer Financial Protection Bureau

- [Power of Attorney](#), American Bar Association
- [Representative Payee](#), Social Security Administration
- [Thinking Ahead Roadmap: A Guide for Keeping Your Money Safe as You Age](#), AARP and University of Minnesota
- [Ways to Pay Your Bills](#), Consumer Financial Protection Bureau

Health Care Supports

- **Telehealth and remote medical monitoring:** Arranging remote medical consultations can eliminate transportation challenges and encourage seeking medical advice and care. Remote medical monitoring is becoming increasingly common, with wearable consumer electronics devices monitoring routine health dimensions and offering emergency alert services and fall detectors.
- **GPS tracking:** GPS tracking can be a valuable support for older adults who have difficulty with direction finding and wandering. Virtually all smart phones and a growing range of smart watches and other devices offer GPS tracking. These allow third parties to monitor and offer help if the person asks for help or appears to need help.
- **Remote video monitoring:** Remote video monitoring can be a tool to enable independence with oversight. However, all video monitoring should give way to the individual's right to privacy. If there are other persons sharing living space with the older adult you are supporting, that person should be consulted and their right to privacy respected as well. The laws on remote video monitoring vary from state to state.
- **Electronic medication management devices:** Electronic medication management devices are electronic units that dispense medication, preloaded into the device by a caregiver or medical professional, in the correct dosage on a predetermined date and time with an audible and visual alert to notify the older adult when medication needs to be taken.
- **Care managers and coordinators:** Care managers are professionals, frequently licensed nurses, or social workers, who specialize in identifying the needs of older adults and implementing services to meet those needs. A care manager can develop a care plan then help obtain and coordinate the services identified in that plan. Care coordinators (sometimes called patient coordinators or navigators) can help organize the older adult's health care and treatment activities while facilitating the sharing of information between the older adult and their medical team.
- **Home health care:** Home health care provides skilled, short-term services in the older adult's home. These services are typically ordered by a doctor to help with recovery following an inpatient hospital stay, rehabilitation, or a stay at a facility providing skilled nursing care. The goal of home health care is generally to help regain independence and self-sufficiency.
- **Living will directive:** Some states have a statutory or regulatory form for a living will directive that includes the option to name a health care agent or supporter. A living will form leaves specific directions about care when the person is permanently unconscious or death is imminent. The designated agent has no authority to make medical decisions unrelated to end of life.

- **Health care surrogate or proxy:** A health care surrogate (sometimes called a proxy) is someone who makes health care decisions for a person when the person is unable to make decisions for themselves. Many states have a short form for naming a surrogate, and a few states allow an oral designation (usually in the presence of a physician who documents the name in the person's records). The document and state law control the scope of surrogate authority. If no surrogate has been named, state law may guide who can make decisions, generally prioritizing nearest relatives.
- **Power of attorney for health care:** A power of attorney for health care is a legal document that grants a person (the agent) the authority to make decisions about medical treatment and care on behalf of the person appointing them (the grantor). The scope of the agent's authority is limited by the terms of the document and by state laws.

Resources

- [Find Advance Directives Forms by State](#), AARP
- [Find Home Health Services Near Me](#), Medicare
- [Geriatric Care Managers Advocate for Older Adults – and Their Caregivers](#), AARP
- [Giving Someone a Power of Attorney for Your Healthcare \(Multi-State Guide and Forms\)](#), American Bar Association
- [Health Care Decision-Making](#), American Bar Association
- [How Geriatric Care Managers Can Help Family Caregivers](#), AARP
- [Living Wills, Health Care Proxies, & Advance Health Care Directives](#), American Bar Association
- [What Is a Geriatric Care Manager?](#), National Institute on Aging

Additional Trainings

- [Alternatives to Guardianship for Common Legal Aid Cases](#)
- [Decision-Making Supports: The Role of the Supporter or Advocate](#)
- [Overview of Guardianship and Alternatives to Guardianship](#)
- [Representing Clients with a Range of Decisional Capabilities](#)
- [Role of Decision Supports in Elder Abuse Prevention and Recovery](#)
- [Using Alternatives to Guardianship to Defend Against or Terminate Guardianship](#)

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at ConsultNCLER@acl.hhs.gov.

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