

PRACTICAL Tool for Lawyers: Steps in Supporting Decision-Making

The PRACTICAL Tool aims to help lawyers identify and implement decision-making options for persons with disabilities that are less restrictive than guardianship. It is a joint product of four American Bar Association entities – the Commission on Law and Aging, Commission on Disability Rights, Section on Civil Rights and Social Justice, and Section on Real Property, Trust and Estate Law, with assistance from the National Resource Center for Supported Decision-Making.

PRESUME guardianship is not needed.

- Consider less restrictive options like financial or health care power of attorney, advance directive, trust, or supported decision-making
- Review state statute for requirements about considering such options

Observations and Notes:

REASON. Clearly identify the reasons for concern.

Consider whether the individual can meet some or all of the following needs.*

Money Management:

- Managing accounts, assets, and benefits
- Recognizing exploitation

Health Care:

- Making decisions about medical treatment
- Taking medications as needed
- Maintaining hygiene and diet
- Avoiding high-risk behaviors

Relationships:

- Behaving appropriately with friends, family, and workers
- Making safe decisions about sexual relationships

Community Living:

- Living independently
- Maintaining habitable conditions
- Accessing community resources

Personal Decision-Making:

- Understanding legal documents (contracts, lease, powers of attorney)
- Communicating wishes
- Understanding legal consequences of behavior

Employment:

- Looking for, gaining, and retaining employment

Personal Safety:

- Avoiding common dangers
- Recognizing and avoiding abuse
- Knowing what to do in an emergency

**Observations and Notes
(List supports needed.):**

*Adapted from University of Missouri Kansas City, Institute for Human Development, "MO Guardianship: Understanding Your Options & Alternatives," <http://moguardianship.com>.

ASK if a triggering concern may be caused by temporary or reversible conditions.

Look for steps to reverse the condition or postpone a decision until the condition improves.

Are concerns the result of or related to temporary or reversible conditions such as:

- Medical conditions:** Infections, dehydration, delirium, poor dental care, malnutrition, pain
- Sensory deficits:** hearing or vision loss
- Medication** side effects
- Psychological conditions:** stress, grief, depression, disorientation
- Stereotypes or cultural barriers**

Observations and Notes:

COMMUNITY. Determine if concerns can be addressed by connecting the individual to family or community resources and making accommodations.

Ask “what would it take?” to enable the person to make the needed decision(s) or address the presenting concern.

Might any of the following supports meet the needs:

Community Supports:

- In-home care, adult day care, personal attendant, congregate and home delivered meals, transportation
- Care management, counseling, mediation
- Professional money management

Accommodations:

- Assistive technology
- Home modifications

Residential Setting:

- Supported housing or group home
- Senior residential building
- Assisted living or nursing home

Informal Supports from Family/Friends:

- Assistance with medical and money management
- Communication assistance
- Identifying potential abuse

Observations and Notes:

TEAM. Ask the person whether he or she already has developed a team to help make decisions.

- Does the person have friends, family members, or professionals available to help?
- Has the person appointed a surrogate to help make decisions?

Observations and Notes:

IDENTIFY abilities. Identify areas of strengths and limitations in decision-making if the person does not have an existing team and has difficulty with specific types of decisions.

Can the individual:

- Make decisions and explain his/her reasoning
- Maintain consistent decisions and primary values over time
- Understand the consequences of decisions

Observations and Notes:

CHALLENGES. Screen for and address any potential challenges presented by the identified supports and supporters.

Screen for any of the following challenges:

Possible challenges to identified supports:

- Eligibility, cost, timing or location
- Risk to public benefits

Possible concerns about supporters:

- Risk of undue influence
- Risk of abuse, neglect, exploitation (report suspected abuse to adult protective services)
- Lack of understanding of person's medical/mental health needs
- Lack of stability, or cognitive limitations of supporters
- Disputes with family members

Observations and Notes:

APPPOINT legal supporter or surrogate consistent with person’s values and preferences.

Could any of these appointments meet the needs:

- Agent under health care power of attorney or advance directive
- Health care surrogate under state law
- Agent under financial power of attorney
- Trustee
- Social Security representative payee
- VA fiduciary
- Supporter under representation agreement, legally or informally recognized

Observations and Notes:

LIMIT any necessary guardianship petition and order.

If a guardian is needed:

- Limit guardianship to what is absolutely necessary, such as:
 - Only specific property/financial decisions
 - Only property/finances
 - Only specific personal/health care decisions
 - Only personal/health care decisions
- State how guardian will engage and involve person in decision-making
- Develop proposed person-centered plan
- Reassess periodically for modification or restoration of rights

Observations and Notes:

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