Ohio Guardianship Summit

Rights of Individuals with Guardians

Materials

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Karla Rinto, Executive Director, Advocacy & Protective Services, Inc.

1. PowerPoint Presentation
    - Rights of Individuals with Guardians

Rights of Individuals with Guardians

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Overview of Session

- Introductions
- Sources of Rights
- Rights of Individuals with Guardians
- How to Protect Rights

Presenters

- Kristen Henry, Attorney, Disability Rights Ohio
  - DRO: private, non-profit agency designated as Protection and Advocacy System for people with disabilities in Ohio
- Karla Rinto, Executive Director, Advocacy & Protective Services, Inc.
  - APSI: private, non-profit agency appointed as guardian for individuals with developmental disabilities in Ohio

Sources of Rights

- Constitution
  - Same rights as individuals who do not have guardians
- State, federal, and international law
  - All rights not specifically limited or delegated
  - U.N. Convention on the Rights of Persons with Disabilities
  - Americans with Disabilities Act
  - Guardianship procedures
  - Bill of Rights for specific populations
    - DD Bill of Rights: RC 5123.62
    - Nursing Home Residents' Rights: RC 3721.13
- Rules and regulations
  - Rules of Superintendence for the Courts of Ohio
  - Regulations of service providers
- Resource: Ohio Guardianship Guide

Procedural Rights

- Before the guardianship is established
  - Notice
  - Attend the hearing
  - Friend or family member present
  - Counsel (chosen or appointed)
    - Includes appellate counsel
  - Independent evaluation (chosen or appointed)
  - Transcript
  - Consideration of less restrictive alternatives

Procedural Rights (cont.)

- After the guardianship is established
  - Review hearing
    - Upon request: after 120 days, then annually
    - Same rights as initial hearing
      - Including appointed counsel (McQueen case)
  - Petition court
    - Grievance against guardian
    - Request for changes to guardianship
  - Consideration of less restrictive alternatives
    - Supported decision-making
    - Powers of attorney
    - Limited guardianship

Human Rights

- Treated with dignity and respect
- Privacy
  - Bodily privacy
  - Communication/visits
  - Access to attorney, ombudsman, or other advocate
- Appropriate services
- Safe, sanitary, humane living conditions
- Least restrictive environment
  - Court must approve more restrictive placements

Legal Rights

- Vote
- Marriage
- Procreation or sterilization
- Equal treatment under the law
  - ADA/Olmstead: segregation is discrimination
- Drive
- Confidentiality

Right to Be Involved

- Guardian must consider individual's personal desires, preferences, and opinion
- Explanations of medical procedures or treatment
- Review records
- Best interest
  - Least intrusive
  - Most normalizing
  - Least restrictive
- Request release from psychiatric facility

Requirements for Guardians

- Professionalism, character, and integrity
- Exercise due diligence
- Preserve and foster relationships
- Communication with individual
- Conflicts of interest
  - Including direct service providers
- Coordinating services
- Extraordinary medical issues/end of life
- Caseload
- Confidentiality
- Annual plan
- Ongoing reporting requirements
  - Abuse, neglect, exploitation
  - Changes in condition/needs

Standards for Providers

Disability Rights OHIO

- State and federal licensure/certification
  - ODH/CMS: nursing facilities, assisted living facilities, hospitals, home health agencies
  - DODD: ICF/IIDs, DD community providers
  - OhioMHAS: residential facilities, group homes
  - Medicaid: provider standards
- Bill of Rights for specific groups
- Private accreditation
  - Joint Commission
  - CARF
  - ACHC
  - NCQA

Regulations = Rights

- Regulations for providers can affect a guardian's exercise of power
  - Guardian cannot authorize or require provider to violate licensure or certification requirements.
  - Example: A guardian cannot authorize seclusion if the provider is not licensed for seclusion.

U.N. Convention on the Rights of Persons with Disabilities

Disability Rights OHIO

- U.S. has signed but not ratified
- Article 12: Equal recognition before the law
  - Recognition as person, equal legal capacity
  - Support to exercise legal capacity
  - Safeguards to prevent abuse
    - Respect rights, will, preferences
    - Free of conflicts of interest/undue influence
    - Tailored to individual circumstances
    - Shortest time possible, regular review
  - Equal property rights
    - Own/inherit property
    - Control financial affairs, equal access to credit
    - No arbitrary deprivation of property

Balancing Rights and Restrictions

- "APSI is appointed guardian of person for individual's deemed by the courts not able to provide their own informed consent."

- APSI endeavors to balance rights and restrictions in making informed consent decisions for individuals in the developmental disabilities community.

Priorities

- APSI seeks outcomes that promote self determination, self advocacy, and person centered planning.
- The health and well being of the individual are priorities…
- Balanced with better quality of life according to the wishes, goals, values, and beliefs and personal preferences of the individual.

Rights Restrictions

- When does APSI consider a rights restriction appropriate?
  - Rights restrictions may be considered in situations involving abuse, neglect, exploitation, and imminent risk of harm
  - APSI's policy is to foster and preserve positive relationships in the person's life, unless such relationships are substantially harmful to the individual

When There is a Conflict

- In any case where the interests of an individual and the interest of APSI as the guardian diverge and are part of a suit,
- APSI shall request the court appoint a guardian ad litem or other representative.
- APSI shall also refer an individual to Disability Rights Ohio when the individual is in need of legal representation.

Compliance With Courts and DD System

Advocacy & Protective Services, Inc.

- APSI is required to comply with standards from both the DD system and probate courts. If standards are divergent, APSI strives to meet the expectation of both systems.

- In the event APSI receives conflicting directives APSI will comply with those provided by the probate court.