What’s New in Supported Decision Making in Minnesota?

MN Gerontological Society
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Objectives

1. Define supported decision making and incapacity according to MN statute

2. Describe the role of SDM in avoiding guardianship

3. Explore how SDM can be used to support older adults with cognitive impairments at risk of guardianship
Poll

How familiar are you with Supported Decision Making?
A. Not at all (SDM? What’s that?)
B. A little (I’ve heard of it: but please don’t ask me to explain it)
C. Quite (I’m a fan and try to apply it regularly in my work)
D. Very (I could lead this presentation)

Roadmap

• Changing Perspectives on Guardianship
• MN Statute 524.5
• SDM Overview
• SDM in Action
Changing Perspectives: Guardianship

Valuable tool to protect Vulnerable Adult?  

Heavy-handed tool which strips constitutional right to self-determination?

Changing Perspectives: Recognizing That:

• guardianship has historically been overused

• guardianship often sought to solve problems that guardianship can’t solve

• protections of guardianship also bring significant risks to the person

• guardianship may promote false sense of security, hiding risks to the person
Overuse of Guardianship (Default Intervention)

- 3rd most frequently used intervention in adult protective services in MN
- Assumptions about need for guardianship for older adults with cognitive impairments (health care, social services, attorneys)
- Reliance on informed consent for treatment and services
Guardianship is Expensive

• Person’s estate

• *In Forma Pauperus*: County or Court budget

• Family (?)

• Court fees, attorney fees (petitioner + court-appointed), professional G/C

Guardianship: False Sense of Security?

• Limitations of Guardian authority
• Guardians can’t mandate behaviors / can’t guarantee safety
• Well-intended but overly controlling guardians
• Guardians as perpetrators
Guardians Can’t Control Behaviors: 
Practical Perspective

consent power

not

action or compliance power

Unintended Consequences of Guardianship

• Increased resistance / decreased cooperation

• Loss of sense of self, agency = depression, apathy

• Diminished quality of life
  • Focus on protection/safety
  • Focus on health outcomes
“Older adults with more self-determination have improved psychological health including better adjustment to increased care needs”

O’Conner & Vallerand, Canadian Journal on Aging, 1994

Research: Benefits of Self-Determination

• Older adults who exercise more control over their lives have a better quality of life. Mallers, et al., 2014

• Providing support to people with dementia can lead to them being able to provide informed consent.
  Haberstroh, et al. 2014
Research: Benefits of Self-Determination

People with disabilities who exercise greater self-determination have a better quality of life, more independence, and more community integration.

Powers et al., 2012; Shogren, Wehmeyer, Palmer, Rifenbark, & Little, 2014; Wehmeyer and Schwartz, 1997; Wehmeyer & Palmer, 2003

To deny the right to make choices in an effort to protect the person with disabilities from risk is to diminish their human dignity.

~ Robert Perske

Dignity of Risk
Changing Perspectives: Supporting People with Disabilities

Historic (Current?) Practice

Person can’t make decisions/arrange for care and housing independently

=  

Incapacity, therefore:

Needs guardian or other decision maker
Pivoting to Supported Decision Making

Person can’t make decisions/arrange for care and housing independently

= Needs support to make decisions and arrange for care

+ Accommodations by providers / systems

= Supported (not Substitute) Decision Making

POLL

When I have a complicated decision that has me stumped, I typically:

a. Google it, choose what is most often mentioned

b. Talk to my close friends/family to help weigh pros and cons

c. Find someone with experience to tell me what they did

d. All of the above

e. None of the above: I make all of my decisions independently
**Supported Decision Making**

"a recognized alternative to guardianship where people with disabilities use trusted friends, family members, and professionals to help them understand the situations and choices they face, so they may make their own decisions without the 'need' for a guardian"

(Blanck & Martinis, 2015)

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**Supported Decision Making: Definition**

"[J]ust a fancy way of describing how we all make choices. We all need help making decisions, every single day."

~ Jonathan Martinis, Esq.

(Blanck & Martinis, 2015)
Supported Decision Making: Paradigm Shift

• “A way people can make own decisions, stay in charge of their lives while receiving help they need to do so.”

• Person making decisions with support of others vs. others making decisions for the person: “…cutting through the jargon to understand what’s going on and what you need to do…”

  ~ Jonathan Martinis, Esq.

POLL

Supported Decision Making is defined in Minnesota Statute and we are required to rule out SDM before a guardian can be appointed

☐ True

☐ False
Supported Decision Making:
Legal Definition

Assistance from one or more persons of an individual's choosing in understanding the nature and consequences of potential personal and financial decisions which enables the individual to make the decisions and, when consistent with the individual's wishes, in communicating a decision once made.

MN Statute 524.5-102, Subd. 16a

Incapacitated Person

- impaired to the extent of lacking sufficient understanding or capacity to make personal decisions

  and

- who is unable to meet personal needs for medical care, nutrition, clothing, shelter, or safety, even with use of appropriate technological and supported decision making assistance

MN Statute 524.5-102 Subd. 6
Criteria for Legal Intervention: Guardianship

- Incapacitated person; and
- Identified needs cannot be met by less restrictive means, including but not limited to use of appropriate technological assistance, supported decision making, community or residential services, or appointment of a health care agent.

MN Stat. 524.5-310 (a)

Legal Intervention: Conservatorship

- Person is unable to manage property & business affairs b/c of impairment in ability to receive and evaluate information or make decisions, even with use of appropriate technological assistance;
- Has property which will be wasted or dissipated unless management is provided or
- Money is needed for support, care, education, health, and welfare of the person or individuals entitled to the person’s support and
Legal Intervention: Conservatorship

...and:

- Identified needs cannot be met by less restrictive means, including but not limited to use of appropriate technological assistance, supported decision making, representative payee, trusts, banking or bill paying assistance, or appt. of attorney-in-fact

MN Stat. 524.5-409 Subd.1(1)(2)(3)

Supported Decision Making

- A statutory option in Texas, Delaware, Wisconsin, D.C., Missouri, Alaska, North Dakota, Indiana, Nevada, British Columbia, Australia, Denmark, other jurisdictions...statute mentions: Minnesota, Maine, Maryland, Kansas...pending in CT, KS, KY, MA, OR, RI, WA

- A philosophical approach: a paradigm, not a process

- Another less restrictive alternative, or tool, on spectrum of decision making
What is SDM?

- people who need help with decision making receive the help they need and want
- preserves rights & build on existing capacity with real life experience and learning
- essential element for achieving self-determination & meaningful inclusion
- empowering, skill-building, transformative approach to assisting people
Rethinking Support

- what role & responsibility to professionals have to support individual decision-making?
- what about the role of families?
- what could support look like? (one size does not fit all)

Providing Support

- take direction from the person & their will & preferences
- customize actions to & with the person
- find new tools for your toolbox: communication; peer support; practice experience; life coaching
- Be flexible & try multiple ways
What Can You Do?

• learn to evaluate need for intervention by weighing risk of harm/failure with risk of loss of dignity, self-direction & quality of life

• educate people on available options (families, other professionals)
**SDM Example: Managing Money**

~ no one talks about money with the person & person does whatever wants: not SDM

~ someone manages all the person's money, gives no choices about how it's spent: not SDM

~ *anything else - opening joint bank account, making a budget together, having a fiduciary who discusses how to spend money: is SDM*

(National Resource Center on SDM Brainstorming Guide)

**SDM Example: Making Health Care Decisions**

- person makes own decisions without talking to anyone else: not SDM
- someone else makes all medical decisions for person without discussing preferences/opinions: not SDM
- *anything else - attending medical appts. together, explains healthcare choices in plain language, shares access to medical records: is SDM*

(National Resource Center on SDM Brainstorming Guide)
**SDM Example: Deciding Where to Live**

- person makes own decisions without consulting friends, family, professionals: not SDM
- someone else makes all living decisions for person without considering preferences / opinions: not SDM
- anything else – visiting possible residences together, making pro/con lists; discussing direct service needs: is SDM

(National Resource Center on SDM Brainstorming Guide)

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**Not Everyone is a Candidate for SDM**

But a lot of people are!
Person May Be a Candidate for SDM

- Recognizes needs help or support
- Has trusted others to form team
- Cooperative and/or open to trusted others’ ideas
- Ideally, able to also complete HCD/POA
- (Dx. irrelevant)

Person Likely Not a Candidate for SDM

- Does not recognize need for help/refuses
- Resistiveness cannot be overcome
- Person sabotages others’ efforts (and this can’t be overcome)
- No trusted supporters
- Supporters not able to act per wishes/best interests (and can’t learn how to)
Supported Decision Making In Action:

Donald & Sophie

Supported Decision Making In Action: Harriet
Supported Decision Making As LRA

- Family/Friend/Peer Supporters/SDM
- Providers: Case Managers, DSPs, ILS workers, etc.
- Release of Info
- HCD
- Banking Tools
- Rep Payee
- POA

Summary

Guardianship:

- has historically been overused
- is expensive: to individuals, to systems
- may promote false sense of security
- is often sought to solve problems that guardianship can’t solve
Summary (cont’d)

- Guardianship comes with significant unintended consequences for the person

- Weight benefits/protections of guardianship against losses/harm to person

- Understanding benefits of self-determination

Supported Decision Making

- How we all make decisions
- Benefits of self-determination
- Retains rights
- Balancing what is important TO the person and important FOR the person
- Required by law
- National and State-wide movement
Safety and Choice

“...our most cruel failure in how we treat the sick and the aged is the failure to recognize that they have priorities beyond merely being safe and living longer; that the chance to shape one’s story is essential to sustaining meaning in life ... we have the opportunity to refashion our institutions, our culture, and our conversations in ways that transform the possibilities for the last chapters of everyone’s lives.”

— Atul Gawande, Being Mortal: Medicine and What Matters in the End

POLL

As a result of this training, I

a. Am more confused than ever
b. Feel more confident about considering alternatives to guardianship
c. Better understand how supported decision making can help avoid guardianship
d. B and C
e. All of the above
GUARDIANSHIP INFORMATION LINE

952-945-4174

1-844-333-1748

cesdm@voamn.org
➢ Phone Consultation, Advice, I&R
➢ Drop-in Virtual Clinic
➢ Assessments
➢ Facilitation of Supported Decision Making & Surrogate Decision Making Legal Tools
➢ Petitioning for G/C, Terminations, Modifications

New! Virtual Guardianship Info Clinic

1st WEDNESDAYS
GUARDIANSHIP INFORMATION CLINIC
Drop in during clinic hours to meet with our social workers or attorney for educational information and to get their questions answered in real time: no appointments, no voice mail, no phone tag, just direct access to our social work and legal team members!
Contact: cesdm@voamn.org

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RESOURCES

VOA MN  www.voamnwi.org

• Legal Services: HCD forms and more  
  https://www.voamnwi.org/estate-and-elder-law

• CESDM & Protective Services: links to articles, G&C FAQ and more  
  www.voamnwi.org/protective-services

www.voamnwi.org/pdf_files/cesdm-guide-to-supported-decision-making
RESOURCES

State Courts-forms and manuals:

Bill of Rights for Wards & Protected Persons:
www.revisor.mn.gov/statutes/?id=524.5-120

National Resource Center on Supported Decision Making
www.supporteddecisionmaking.org

National Resource Center on SDM Brainstorming Guide (and SDMA model forms)

Supported Decision Making Agreement Examples
RESOURCES

How to Make an SDMA
http://www.ucdmc.ucdavis.edu/mindinstitute/centers/cedd/pdf/How%20to%20make%20a%20SDM%20agreement%20for%20people%20with%20disabilities%20and%20their%20families_ACLU.pdf

Missouri Stoplight Tool
http://moguardianship.com/Alternatives%20to%20Guardianship%20Tool%20Revised%202011-2015.pdf

Charting the Lifecourse
https://www.lifecoursetools.com/lifecourse-library/exploring-the-life-domains/supported-decision-making/

MN Courts: Online Training
Online Training: *Finding the Right Fit*

https://eji.courtlms.org/

**RESOURCES**

**WINGS MN:** [www.wingsmn.org](http://www.wingsmn.org) and: [www.mncourts.gov/Help-Topics/Guardianship-and-Conservatorship/WINGS.aspx](http://www.mncourts.gov/Help-Topics/Guardianship-and-Conservatorship/WINGS.aspx)

**Supported Decision-Making: What, Why, & How** by Morgan Whitlatch
VIDEO RESOURCES

• What Guardianship Means to Me
  https://youtu.be/u6FTL7bYUAw

• Missouri Tool
  https://youtu.be/D_XnGrCi8L4

• Michael, St. Thomas School of Law Clinic on WCCO
  https://youtu.be/acIKso0vqlY
• Annual Summit
• Quarterly newsletters with local and national news
• Community and Professional Education & Training: Guardianship, SDM, etc.

Join our efforts to promote alternatives to guardianship and expand networks of people addressing maltreatment of vulnerable adults:

Become a WINGS MN community member!

cesdm@voamn.org
www.wingsmn.org
We’re Listening!

We want to hear your guardianship or supported decision making story!

Please contact us to tell us more about your experience.

952-945-4174

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