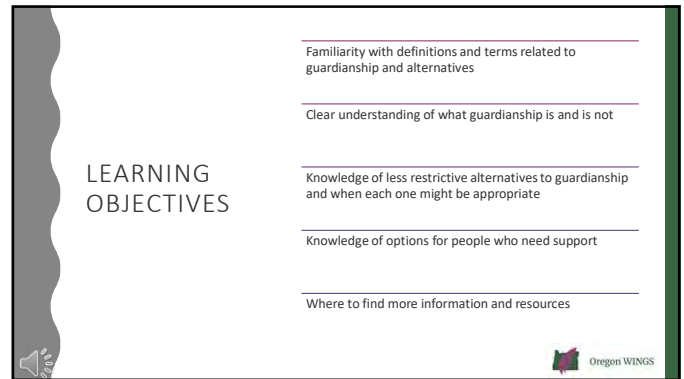




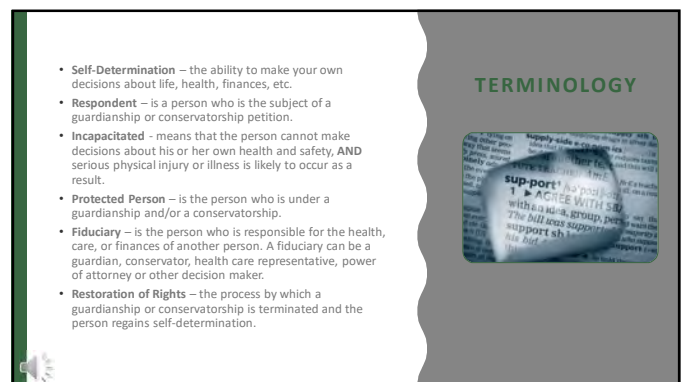
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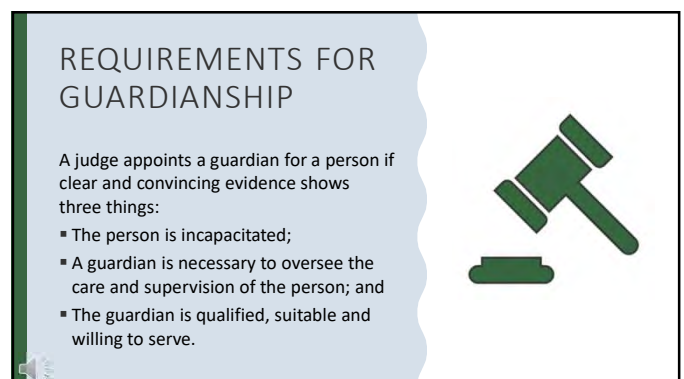
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6

A **limited guardianship** occurs when a guardian is appointed for a short period of time (temporary guardianship) and/or the powers of the guardian are limited by the court for a specific reason.

Under Oregon law:

- The petitioner must state whether they are seeking a full (plenary) guardianship or a limited guardianship.
- A court may appoint a guardian “only as necessary to promote and protect the well-being of the protected person” and only to the extent necessitated by the person’s actual mental and physical limitations.

LIMITED GUARDIANSHIP

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A full (plenary) guardian has all powers available to guardians under the law.

- This restricts civil liberties the most, resulting in the greatest loss of autonomy and self-determination for the protected person.
- A full guardianship does not mean that the protected person has lost all rights; instead the protected person retains all civil rights aside from those given to the fiduciary.
- In all guardianships the guardian must consider the **wishes and preferences of the protected person**.

FULL GUARDIANSHIP

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DECISIONS MADE BY GUARDIANS

Decisions that cannot be made by another person	Decisions that can be made by another person	Decisions that can be made by another person only with a court order
<ul style="list-style-type: none"> • Marry • Vote • Seek or retain employment 	<ul style="list-style-type: none"> • Contract • Sue and defend lawsuits • Apply for government benefits • Manage money or property • Decide where to live • Consent to medical treatment • Decide with whom to associate or be friends with 	<ul style="list-style-type: none"> • Committing the person to a facility or institution • Consenting to experiments • Filing for divorce • Consenting to termination of parental rights • Consenting to sterilization or abortion

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WHAT IS CONSERVATORSHIP?




Conservatorship is the formal court process where a judge appoints another person, called a conservator, to administer the finances of a financially incapable person.

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REQUIREMENTS FOR CONSERVATORSHIP



A judge appoints a conservator for a person if clear and convincing evidence shows three things:

- The person is financially incapable;
- A conservator is necessary to oversee the finances of the person; and
- The conservator is qualified, suitable and willing to serve.

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DECISIONS MADE BY CONSERVATORS



FINANCIAL CONTRACTS



MONEY MANAGEMENT



PROPERTY MANAGEMENT

Oregon WINGS

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- Use substituted judgement – make decisions based on how the person would decide for themselves
- Follow the best practices set by the National Guardianship Association
- Act only in the best interest of the person if the person's own desires are not or cannot be known
- Manage the person's affairs carefully and keep good records of decisions made for the person

RESPONSIBILITIES OF A GUARDIAN OR CONSERVATOR

The authority of a fiduciary is limited by law, either by statute or the judgement that grants their authority.

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DO'S & DON'TS OF A GUARDIAN OR CONSERVATOR

Do:

- ✓ Know your authority and any limits that may be in place on your ability to make decisions for the person
- ✓ Communicate with the protected person and understand their wishes and desires
- ✓ Maximize the independence and self-reliance of the person

Don't:

- ✓ Make decisions *without* including and considering the person and preferences
- ✓ Take any action that the protected person can do on their own

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STORIES



15

Oregon Revised Statutes state:

- Every person has a right to self-reliance and independence
- **ALL** less restrictive alternatives must be considered before a guardian or conservator is appointed



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AVAILABLE ALTERNATIVES

SAFETY & WELL-BEING
MEDICAL TREATMENT
MONEY MANAGEMENT



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SAFETY & WELL-BEING ALTERNATIVES

- Supported Decision Making
- Case Management
- Direct Care / Support
- Department of Human Services




18

Supported Decision-Making is an alternative where people with disabilities retain their rights and their decision-making capacity.

- Trusted supporters/advisors such as friends, family, or professionals, help the person make their own choices.
- The supporters help the person with a disability understand, make, and communicate her own choices.

SAFETY & WELL-BEING

Supported Decision Making



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Case management and services coordination connect people to community programs and services that can help them:

- Meet their goals
- Obtain needed services
- Prevent crisis

Case management is usually a Medicaid service through the Department of Human Services; however, people who are not eligible for Medicaid can purchase private case management services.

SAFETY & WELL-BEING

Case Management

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Direct support comes in many forms. These types of support and/or care for a person are often referred to in Oregon as **long-term services and supports**.

Some are provided through Oregon's Department of Human Services and Medicaid. Others may be via private insurance or select limited coverage under Medicare.

SAFETY & WELL-BEING

Direct Care / Support

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Types of Services Include:

- Case Management Services
- Personal care assistance in
 - Person's own home
 - Provider-owned home
 - Foster home
 - Provider facility
- Independent Living Centers
- Employment services
- Day habilitation
- Caregiver Support, Respite
- Reporting Adult Abuse 1-855-503-SAFE

SAFETY & WELL-BEING

Oregon Department of Human Services

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The Oregon **Office of the Long-Term Care Ombudsman** serves as a watchdog and advocate for residents of all ages and abilities in many settings, including long term care including small group and residential home facilities. It can provide data and feedback on facility citations and surveys.

It also houses the **Oregon Public Guardian** program.

OREGON OFFICE OF THE LONG-TERM CARE OMBUDSMAN

<https://www.oltco.org/oltco>

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MATCH-MAKER

READ EACH SCENARIO AND DECIDE WHICH ALTERNATIVE SEEMS LIKE THE BEST MATCH

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MEDICAL TREATMENT ALTERNATIVES

- HIPAA Release of Information
- Advance Directive with Health Care Representative
- Health Care Advocate (HCA)
- Portable Orders for Life-Sustaining Treatment (POLST)
- Declaration of Mental Health Treatment (DMHT)
- Civil Commitment

Oregon WINGS

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MEDICAL TREATMENT

HIPAA Release of Information

- A **HIPAA Release** authorizes the disclosure of protected medical information to a third party.
- It is not a grant of authority to act - rather, it is the right to receive information.
- Strict adherence to confidentiality must be maintained.

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MEDICAL TREATMENT

Advance Directive w/Health Care Representative

- The **Advance Directive** serves two purposes:
 1. Appoints a Health Care Representative who is authorized to make medical decisions when the patient cannot speak for themselves; and,
 2. Provides end-of-life instructions regarding life-support and tube feeding.
- The Advance Directive allows the patient to add additional instructions regarding the type of care that they would like to receive if the Health Care Representative is serving.
- The designated Health Care Representative must agree to serve as the decision maker.

<https://sharedsystems.dhsoha.state.or.us/DHSForms/Served/le3905.pdf>

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MEDICAL TREATMENT

Health Care Advocate

- A **Health Care Advocate (HCA)** may be appointed to make certain health care decisions on behalf of the person if:
 - ✓ The person has an intellectual or developmental disability (defined by state law);
 - ✓ The person is enrolled in services through Oregon's Office of Developmental Disabilities Services; and
 - ✓ A court or attending physician has determined the person cannot make certain health care decisions.
- The person, with their Individualized Written Service Plan (ISP) team, may appoint an HCA.
- The HCA's authority is withdrawn if the person objects.
- Significant health care decisions must be discussed with ISP team.

For more information, contact the local Community Development Disability program through a toll-free number: 1-800-282-8096.

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MEDICAL TREATMENT

Portable Orders for Life-Sustaining Treatment (POLST)

- This is a medical order executed between a patient with capacity and a health care professional.
- Sets forth specific medical treatments the patient wants during a medical emergency.
- The POLST is registered in a state database so that health care providers including EMTs, hospitals and long-term care facilities can access.
- The POLST can be used in conjunction with an Advance Directive, but does not replace it.

<http://oregonpolst.org>

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MEDICAL TREATMENT

Declaration of Mental Health Treatment (DMHT)

- A person may complete the DMHT form to tell health care providers what kind of mental health treatment they desire if a mental health crisis arises and they cannot speak for themselves.
- The DMHT form also allows the person to name a representative to make treatment decisions for the person in a mental health crisis.
- The DMHT covers mental health medications, treatments and admissions to a health care facility for up to 17 days for mental health treatment.

<https://www.oregon.gov/oha/HSD/amh/forms/declaration.pdf>

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MEDICAL TREATMENT

Civil Commitment

- A civil court process used when a person needs psychiatric treatment but will not or cannot consent to hospitalization.
- A judge decides the person is a danger to themselves or others or is unable to care for themselves due to a mental disease or defect.
- Civil commitment lasts no more than 180 days unless a judge orders re-commitment.

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MATCH-MAKER

READ EACH SCENARIO AND DECIDE WHICH ALTERNATIVE SEEMS LIKE THE BEST MATCH

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MONEY MANAGEMENT ALTERNATIVES

- ABLE Accounts
- Money Management Assistance
- Joint accounts
- Representative Payee / VA Fiduciary
- Power of Attorney
- Trusts

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MONEY MANAGEMENT

Achieving a Better Life Experience (ABLE) Accounts

ELIGIBILITY

- Have a disability or blindness that developed before the age of 26 that will last, or has lasted at least a year

BENEFITS

- Save money without jeopardizing benefits
- Appoint an “authorized representative” to help manage funds
- Use money for “qualified disability expenses”

www.OregonAbleSavings.com

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MONEY MANAGEMENT

Money Management Assistance

A money management program, administered by various local service providers, may be able to help people in need manage their money.

The Money Management Program can help people by:

- Organizing financial papers
- Paying bills
- Banking

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MONEY MANAGEMENT

Joint Accounts

- A joint account functions like a standard bank account except that two or more people own the account.
- This may be helpful so that one owner of the account may aid another with paying bills, and making necessary purchases.
- Most joint accounts carry rights of survivorship that can lead to problems for an account holder’s heirs.

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When a person gets benefits from the Social Security Administration, the Railroad Retirement Board or the Department of Veterans Affairs, a representative may be appointed to help the person manage the benefits.

- For Social Security and Railroad Retirement benefits, the representative is called a “**representative payee**.”
- For veterans’ benefits, the representative is called a “**VA fiduciary**.”

MONEY MANAGEMENT

Representative Payee VA Fiduciary

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A “Power of Attorney” is a legal document that allows a person to give another person (called an “agent”) the right to act on the person’s behalf.

- Can only be used for financial decisions.
- The authority given to the agent can be limited or broad.
- Can be written to go into effect immediately, even when the person giving the authority to the agent still has full capacity, or to go into effect only when the person becomes incapacitated.

MONEY MANAGEMENT

Power of Attorney

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- A trust holds money or property for the benefit of the person or organization.
- The trust can benefit the person who made the trust, or it can benefit someone else.
- There are many different kinds of trusts.
- People should work with an attorney to decide if a trust is right for them and, if so, which trust works best for their interests.

MONEY MANAGEMENT

Trusts

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MATCH-MAKER

READ EACH
SCENARIO AND
DECIDE WHICH
ALTERNATIVE
SEEMS LIKE THE
BEST MATCH

40

REMEMBER

Oregon Revised Statutes state:

- Every person has a right to self-reliance and independence
- ALL less restrictive alternatives must be considered before a guardian or conservator is appointed

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HOW TO ASSESS OPTIONS

CHARTING THE LIFECOURSE TOOLS

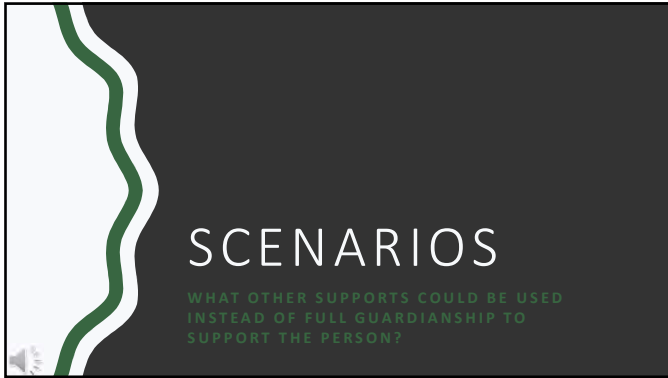
- ✓ INTEGRATED STAR
- ✓ EXPLORING DECISION MAKING SUPPORTS

AMERICAN BAR ASSOCIATION

- ✓ PRACTICAL Tool for Lawyers: Steps in Supporting Decision-Making



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