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### Disability Rights Ohio FACT SHEET:

#### Take Charge of Your Life: Know about Guardianship

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Choices, a grantee of Ohio Developmental Disabilities Council, is comprised of consumer advocates and promotes education and advocacy for individuals who live in intermediate care facilities and nursing homes.

All people have a right to self-determination. Knowledge supports and encourages that right. Ohio Legal Rights Service hopes that the information contained in this booklet will help to strengthen the practical, day-to-day exercise of the right to self-determination for all people with disabilities.

### Introduction

Most of us want to make our own decisions about how to live. Making our own decisions can give us freedom and respect. In this book are things to know so you can make your own decisions as often as possible and take charge of your life. The law says you have a right to make decisions. This means that you can make up your own mind about what you want and what you want to do. Like everyone else, you can make decisions about how to live your life.

Sometimes, other people may think that you can't make decisions because you have a disability. Or sometimes, other people may think that you are not making good decisions. They may think your decisions hurt you or hurt someone else. If you can't make decisions because of your disability, the law can take away or "limit" your right to make decisions and let someone else make your decisions for you. This is guardianship.

### Guardianship

When you can't make decisions for yourself because of your disability, the law can take away or limit your right to make decisions about how to live your life and give someone else permission to make the decisions, instead of you. This is called guardianship.

### What is guardianship?

A limit on your right to make decisions made by the probate court when someone else gets permission to make decisions for your life.

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## How guardianship can start

A person who thinks you need a guardianship writes to the probate court to ask the probate court to make a guardianship for you, and tells the probate court the reasons why the person thinks you need a guardianship. The probate court then decides if it is a good idea to talk about a guardianship for you. If the probate court decides that it is a good idea to talk about a guardianship for you, the probate court will tell you and other people to come to court to talk about guardianship. When you and the other people come to court the probate court will listen to everyone's side of the story and then decide if you need a guardianship.

## Is guardianship for you?

If the probate court believes that you can't make decisions because of your disability, the probate court might make a guardianship for you. A probate court might make a guardianship for you because the probate court believes:

- you can't make decisions, that will get you what most people think you need, and
- someone else can make decisions that will get you what most people think you need.

Even though guardianship may get you what most people think you need, guardianship also takes away or limits your rights.

## Laws to Protect You and Your Rights

The law protects you, and your rights — at all times — even if you have a guardianship. The law protects you, and your rights:

1. if the probate court asks you to come to court to talk about guardianship;
2. if you are in the probate court and everyone is talking about whether you should have a guardianship;
3. if a probate court is trying to decide if you need a guardianship;
4. if the probate court makes a guardianship for you (takes away or limits your right to make decisions).

## When the probate court asks you to come to court

If the probate court asks you to come to court, the law says the court has to follow special rules:

- The court must let you have a lawyer on your side if you want one to help you tell your side of the story and to stick up for your rights, and if you can't afford to pay, your lawyer must be free.
- The court must tell a person in your family that the court is thinking about a guardianship for you (the person is usually your closest family member).
- A person called an investigator must talk to you before going to court. The investigator must talk to you face to face. The investigator will probably ask you questions about your life, and what you do, and how you do things.
- The investigator must write a report about you. The investigator also has to write a report to the probate judge that says what you can do and also says what you cannot do and then give this report to the probate court.
- The investigator must give you information and give you papers. The investigator must tell you about your rights (like about your right to have a lawyer). The investigator must tell you the name of the person who asked the probate court to make a guardianship for you. The investigator must give you papers about going to probate court.

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## Talking about whether you should have a guardianship

If you are in probate court and everyone is talking about whether you should have a guardianship, the law says the court has to follow rules on what happens in court:

- The court must let you be in the court room to hear what people are saying about you, and to let you talk for yourself, and to let you stick up for your rights.
- The court must let you have lawyer on your side. You will have a lawyer if you want one. The lawyer has to do things that protect you and your rights the best way possible, and if you can't afford to pay, the lawyer must be free.
- The court must let you have other people with you in court. Other people, that you pick, can be on your side in court. They can say what they think about you, and they can say what things you can do, and what things you can't do. An independent expert can come to court. This is a special person who knows about guardianships that you get to pick who will talk to you before you go to court and who can then tell the probate court if you are able to make decisions. (And if you can't afford to pay, the expert must be free.)
- The court must let you have your privacy. You can stop some people from talking about you in court, people like your doctor, your social worker, your spouse, clergy, and other people who know your private things.
- The court must read the investigator's report and think carefully about what the report says, and also think carefully about what other people said about you (people who talked in court.)

## Court's decision about a guardianship

If the probate court is trying to decide if you need a guardianship, the law says the court has to follow rules on how to decide:

- Before deciding, the judge must have a hearing where the judge must listen to both sides of the story. The judge must listen to people who talk at the hearing. The judge may ask the people at the hearing to answer questions. The judge may ask you questions.
- Before deciding, the judge must think about your rights. If you have mental retardation, or mental illness, then you have rights under laws written for people like you.
- A judge can make a guardianship, but only if:
  - a doctor has said that you can't make decisions. A doctor who has asked you questions must tell the probate court that you can't make decisions on your own. Remember, if your doctor comes to court, you can tell your doctor to keep your privacy and not say anything about you to anyone, including the judge.
  - the judge believes that there is clear and convincing evidence that you can't make decisions. This means that the probate court judge has to believe that because of what people said about you in court, it is more than probably true that you cannot make decisions. The judge doesn't have to believe that you absolutely can't make decisions, only that you more than probably can't make decisions.
- Before deciding about a guardianship, the judge has to think about one more thing - alternatives. The judge must think if there are other ways, or alternatives, for you to get what you need besides guardianship, because there may be other ways besides guardianship for you to get what you need.
  - For example, maybe you only need help with keeping track of your bills and writing the checks to pay the bills on time. There may be other ways for you to get help or support to do this, instead of guardianship — there may be an alternative.

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- Or maybe you just need help making decisions about your health, like when to see your doctor, or what medicine to take. There may be other ways for you to get help or support to do this, instead of guardianship — there may be an alternative.
- Or maybe you just need help staying safe and not letting other people hurt you. There may be other ways for you to get help or support to do this, instead of guardianship — there may be an alternative.

You should know that alternatives to guardianship don't take away as many of your rights as guardianship. There are many alternatives to guardianship.

A probate court judge should think about alternatives first, before deciding if you should have a guardianship. For example, an important alternative to guardianship is called limited guardianship. A probate court judge may decide to make a limited guardianship because you can't make one decision, or a few other decisions, but you can make most of your other decisions. A limited guardianship only takes away your right to make one or a few decisions. You keep your right to make all other decisions. Before making a guardianship, a probate court judge should think about limited guardianship.

## **When the probate court makes a guardianship**

The law says you still have rights, even if the probate court makes a guardianship for you. Your rights are important. But first, there are some things you should know about guardianship. If the probate court makes a guardianship for you, your right to make decisions will be taken away or limited, and someone else will get permission to make your decisions for you. The following are some questions and answers about guardianship.

### **In a guardianship, who gets permission to make the decisions?**

A person called "the guardian."

### **Who picks the guardian?**

The probate court.

### **Who can be a guardian?**

A person you know (like a member of your family, or a friend), a person you do not know, or an agency called APSI (Ohio hires APSI to be a guardian for a person with mental retardation.)

### **What kinds of decisions does a guardian get permission to make?**

Decisions about your personal life (this is called guardianship of the person), such as

- Where you will live.
- What health care you get.
- Where you go on vacation.
- Where you work.
- Where you go to school.

A guardianship can also make decisions about your money, property or things (this is called guardianship of the estate), such as

- How to spend your money.

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- How to get money other people owe you.
- How to keep your money safe.
- How much of your money to save for you.
- Other things about money, property or things.

A limited guardian can only make decisions about one thing or a few things. The probate judge decides which decisions and writes them on a paper called an order of limited guardianship. The order of limited guardianship is very clear about what decisions a limited guardian can make. The limited guardian can only decide about the things that the Judge writes in the order of limited guardianship. (Remember that a Limited Guardianship is an Alternative to regular guardianship.)

## **How does a guardian make decisions?**

By thinking about what is in your best interests. This means making a decision that most people would think is the right thing for you. It may not be what you like. Making decisions in your best interests is a rule the guardian has to follow. The probate court makes this rule. If you do not like a guardian's decisions you may be able to do something about it.

## **What do I do if I don't like the guardian's decisions?**

If you don't like your guardian's decisions you can tell the probate court or someone can tell the probate court for you.

Guardianship doesn't have to be forever. You can talk in the probate court 120 days after the court makes a guardianship for you (this is called a redetermination hearing) about why you don't need a guardian. The guardian must show that you still need a guardian. You can have help on your side. If you want, you can have a lawyer on your side to help you tell your side of the story and to stick up for your rights and if you can't afford to pay, your lawyer must be free.

## **What else does the guardian do?**

The guardian has to

- follow the rules made by the probate court;
- make decisions in your best interests
- obey the court's orders;
- write a report (about how the guardianship is going and if it is still needed);
- do accounting (write down how much income you received and how your money was spent);
- ask the court's permission before selling your property; and
- ask the court's permission before selling your things.

If the guardian does not follow the rules the probate court can take away the guardian's permission to make decisions. The court can also make the guardian give money as a promise that the guardian will do what the court thinks is right (this money is called a bond.) If the guardian breaks any laws while being a guardian (like stealing your money or property), the guardian could also face criminal charges.

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## Probate Court

The probate court:

- gives the guardian permission to make decisions;
- is the guardian's supervisor;
- keeps an eye on the guardian's decisions;
- can change the guardian's decisions;
- is in charge of the guardianship;
- starts the guardianship;
- can stop the guardianship.

The guardian must listen to what the probate court says because the probate court has the main say about decisions for your life. Think of the probate court as the superior guardian. Remember, if the probate court makes a guardianship for you, your right to make decisions will be taken away or limited, and someone else will get permission to make your decisions for you. Your decisions go to someone else. Because a guardianship takes away or limits your right to make decisions, guardianship can also take away freedom and respect.

## Alternatives to Guardianship

There are other ways besides guardianship for you to get what you need. Alternatives to guardianship can support you to get what you need, without taking away too many of your rights. These are some alternatives to guardianship:

- Conservatorship: This can be for people who want someone else to take care of things, because they are physically unable to do so.
- Representative payeeship or authorized representative: This can be for people who need help with taking care of benefits they receive (like SSI, Medicaid, or retirement benefits).
- Adult Protective Services for people with mental retardation: This can be for adults with mental retardation or developmental disabilities who are being hurt, forgotten, ignored or taken advantage of.
- Adult Protective Services for the elderly: This can be for elderly people who need help with things to stay safe, healthy or independent, and so they don't have to move to a nursing home.
- Protection order: This can be for people who cannot protect themselves from a family member or person they live with who is abusing them.

Remember that these alternatives to guardianship - conservatorship, payeeship or authorized representative, adult protective services for adults with mental retardation, adult protection services for the elderly, and protection orders - can support you to make your own decisions and take away fewer of your rights than guardianship.

## Conservatorship

A conservatorship allows someone else to help you handle some parts of your life because you physically cannot do it yourself. A conservatorship is

- where it is ok with you to get the help,
- where you get to choose the help you want,
- the probate court gives its permission,
- and the probate court keeps an eye on things with the same rules as guardianship.

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A conservatorship may be able to help you if you can make your own decisions (you are mentally competent), but you also have a physical disability that keeps you from taking care of some parts of your life (usually having to do with money). In a conservatorship, a person called the conservator will take care of some parts of your life, like:

- take care of your money, property and things;
- make sure that your money is used to pay for what you need every day and to pay your bills;
- keep track of how your money is used;
- save some of your money and keep it safe.

Having a conservatorship is up to you. You ask the probate court for help if you want it. You choose the person who will help you. You decide what you want help with. You decide if you want the help to stop or keep going.

## **Representative Payeeship or Authorized Representative Program**

A representative payeeship or other authorized representative program is a way to help you take care of your benefit money (like social security or retirement) for those times you can't do it by yourself because of a physical or mental disability. Having a representative payeeship or an authorized representative as your payee may make it easier for you to take care of your benefit money so it pays for your basic needs like food, a place to live and clothing. A representative payeeship or an authorized representative may help you if you get any of these benefits and you have trouble taking care of the benefit money because of your disability:

- Social Security benefits;
- SSDI benefits;
- SSI benefits;
- VA benefits;
- railroad retirement benefits;
- welfare benefits;
- other state benefits;
- federal benefits; or
- other entitlement payments.

## **How does a representative payeeship or an authorized representative program start?**

You or anyone else can say that you need help to take care of your benefit money and ask the government agency that gives the benefit money to make a representative payeeship or an authorized representative program for you.

## **Who decides if you need a representative payeeship or an authorized representative?**

The government agency that gives the benefit money decides if you need a payeeship according to its own special rules. These are some of the government agencies that make representative payeeships:

- Social Security Administration (SSA);
- Department of Veterans Affairs (VA);
- Office of Personnel Management (OPM);
- Railroad Retirement Board (RRB).

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In a representative payeeship, or an authorized representative program, a person called “the payee” will take care of your benefit money. The payee must:

- know what you need for your every day life;
- use your benefit money in a smart way to pay for these things;
- use your benefit money for the most important things first;
- keep track of how your money is used;
- save up the money that is not used;
- the payee must pay for these important things first: your food, clothing, medical care, a place to live, and other things that make you comfortable;
- keep track of and explain how the money is used (make a report);
- when the payee stops being payee, return saved up benefit money;
- tell the agency that gives you benefits about changes in your life.

Changes in your life can be things like:

- if you start working or stop working;
- if you start getting another government benefit;
- if you get married or divorced;
- if don't need help from a payee anymore.

These changes might change how much benefit money you get.

## **Living in a nursing home or other institution**

If you live in a nursing home (or other institution), your benefit money can be used to pay for your care there (benefit money pays for the usual charges of care), but a payee should use at least 30 dollars each month to spend on your personal needs or to save for you. A special rule for nursing home payee is if your payee is the nursing home or other institution and the payee puts your money together with other people's money, the payee must use at least 30 dollars each month on your personal needs or save it for you.

## **What is the payee not allowed to do?**

The payee:

- cannot make medical decisions for you;
- cannot use your benefit money in wrong ways;
- cannot mix your money with the payee's own money;
- cannot have payee's name on a bank account (but the payee's name can be on a bank account that holds only your benefit money. For example, the payee's name can be on a checking account that holds your benefit money. The payee can then use the checks from this checking account to pay your bills for rent and food and other things you need.);
- cannot make contracts for you.

## **Payee or a power of attorney?**

A payee must follow strict, special rules to take care of your money. These rules help keep your benefit money safe. If you give someone a power of attorney (permission) to take care of your benefit money, that person does not have to follow these rules. So, because the payee has to follow the special rules, it may

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be safer to have a payee help you than it is to give someone a power of attorney to help you.

## **Adult Protective Services for Adults with Developmental Disabilities**

There are protective services available for adults with mental retardation (MR) or developmental disabilities (DD). This extra help, called services, can keep you from being hurt, or can keep you from being forgotten or ignored or can keep you from being taken advantage of. Usually, to get the help (services), you have to say it is OK with you and you get to choose the kind of help you want.

When someone hurts your body or your mind, or is mean to you or insults you, that is called abuse. When someone forgets to give you what you need to be healthy and safe, or just ignores what you need, that is called neglect. When someone takes advantage of you (for example, to get money), that is called exploitation. Protective services for adults with MR or DD may help you if you are an adult who has mental retardation or a developmental disability and you are being hurt (abused) or you are being forgotten or ignored (neglected) or you are being taken advantage of (exploited) and you need help (services.) Protective services for adults with MR or DD may be things like:

- medical care;
- mental health services;
- home health care;
- homemaker services;
- help with food and clothing;
- help with a temporary place to live;
- help handling money and bills;
- residential services;
- legal services;
- help watching over and managing your services;
- help watching over and managing your supports.

The local county board of developmental disabilities handles getting adult protective services for adults with MR or DD. The county board makes a plan of the services that may help you, writes it on paper, and then asks you if you want the services. If you want the services, you can say yes by signing the plan. You can say yes for yourself even if you have a guardian. A court may order protective services for adults with MR or DD. A court can order services for an adult for up to 12 months if that adult is being hurt, forgotten or ignored or take advantage of and needs protective services, but can't make decisions (the court believes the adult lacks capacity to make decisions.)

## **Adult Protective Services for the Elderly**

Adult protective services for the elderly provide extra help for people who are 60 years old or older who are being harmed or may be harmed later because they can't protect themselves and don't have anyone else to protect them. Adult protective services may make it easier for you to:

- stay healthy and safe;
- be as independent as possible;
- make as many of your own decisions as possible;
- stay in your own home;
- stay out of an institution (like a nursing home) as long as possible.

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A court can order these services for you for 14 days, but even so, you do not lose the right to make other decisions in your life. Adult protective services for the elderly may help you if you are 60 or older and if:

- you have trouble taking care of yourself;
- you don't have enough food or water;
- you don't have medicines or medical help that you need;
- someone is hurting you;
- someone is mean to you or insults you;
- you have trouble doing chores or taking care of your home;
- your home doesn't have heat or water;
- you have trouble taking care of the bills;
- you can't remember or get confused about things;
- other people take advantage of you or take your money;
- you do things that end up getting you hurt.

Adult protective services for the elderly may be things like:

- counseling;
- casework services;
- medical care;
- mental health services;
- home health care;
- homemaker services;
- help with food;
- clothing;
- shelter;
- help handling money and bills;
- housing-related services;
- guardianship services, placement services;
- legal services, adult day care services.

If your county has enough money to pay for them, you may be able to get services like these.

## Protection Orders

There are things to help you stay safe if a person is hurting you without taking away your right to make decisions. Two things are temporary protection order and domestic violence protection order.

A protection order is a paper that a judge makes that says that someone who has hurt you before, or someone who said they are going to hurt you in the future, has to stop hurting you or has to stay away from you or not talk to you or call you or else the police will arrest them. A protection order may help keep you safe from a person who lives with you or from a member of your family. There are 2 kinds of protection orders.

A Civil Protection Order (CPO) is made by a civil court judge. You can ask a judge in civil court. The judge decides if you get one. A member of your family, or someone who lives with you, can ask for you also. A CPO lasts longer, up to 5 years and may give more benefits, like an order for money support; custody of your child; making someone leave your house. A CPO does not cost anything.

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A Temporary Protection Order (TPO) is made by a criminal court judge. You can ask a judge for a TPO in criminal court. The judge decides if you get one. A criminal charge has to be filed before a judge gives a TPO. TPO lasts until the criminal case ends because the other person is convicted, or because the case is dismissed, or because a plea is made, or because a CPO is made for the same situation. TPO does not cost anything.

## Summary - Take Charge of your Life

- Ask for freedom and respect to make your own decisions.
- Ask for a lawyer to help you if you are going to probate court.
- Ask for someone to explain your rights to you.
- Ask for an independent evaluator to talk with you.
- Ask for privacy - ask your doctor or other people who know you not to tell the probate court what they know about you.
- Ask for information about alternatives, or other ways besides guardianship to get support so you can keep making your own decisions.
- Ask for reasons why someone thinks you should have a guardian - ask them to prove that you couldn't do it on your own if you had supports.
- Ask for a hearing in probate court, if you already have a guardian, to tell the judge why you shouldn't have a guardian anymore.

There are many ways to take charge of your life - the information in this book can help you protect your freedom to make your own decisions.

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