



PTI & Answers4families Webinar

Informational Sessions from the
convenience of your Office or
Home – 12:30pm or 8:30pm – This
month:

Speakers –
Pat Cottingham and
Marla Fischer-Lempke

Guardianship and
Reasonable
Alternatives



Parent Training and Information Nebraska

**PTI Nebraska is a statewide resource for
families of children with disabilities and
special health care needs.**

*PTI Nebraska's staff are parent/professionals
PTI Nebraska conducts relevant workshops across the
state.*

*PTI Nebraska has printed and electronic resources
available at no cost.*

*PTI Nebraska encourages and supports parents in
leadership roles locally and statewide.*



Family to Family Health Information Center

PTI Nebraska is the home of
Nebraska's **Family to Family
Health Information Center**

"This project is supported by the Health Resources and Services Administration (HRSA) of the U.S. Department of Health and Human Services (HHS) under grant number and title for grant amount (H84MC08009, Family Professional Partnership CYSHCN, total \$95,700, no other additional funds provided). This information or content and conclusions are those of the author and should not be construed as the official position or policy of, nor should any endorsements be inferred by HRSA, HHS or the U.S. Government."



Thank you to Our Partner

Special thanks to
Answers4families in providing the
website connection allowing PTI
Nebraska to share information
with families and professionals
free of cost.

Webinar Information

- Please ask questions to guide your learning.
 - Type in the question box on the right
- Documents are available –
 - Click in the box on the lower right side of the presentation to download to your computer or
 - They will be sent by email
- Certificate of Attendance will be provided to all registered participants



Guardianship and Reasonable Alternatives



Presented by:
Pat Cottingham

Acknowledgements

We thank the Florida Developmental Disabilities Council, Inc. for allowing us to modify their material to develop this training.

Developed through a collaboration between Disability Rights Nebraska and The Arc of Nebraska

Objectives

- Present a model of decision making
- Review components of good decision making
- Explore forms of substituted judgment
- Review guardianship as one of many forms of substituted judgment

An opportunity for changing the way decisions are made

- Decision-making *for* people vs. Decision-making *with* people
- Choice vs. Informed choice
- Over-protection vs. Dignity of risk

Fundamental Concepts

- Self-Determination
 - Developmental Model
 - Habilitation
- Principles Underlying Decision Making
 - Least restrictive alternative
- Civil Rights

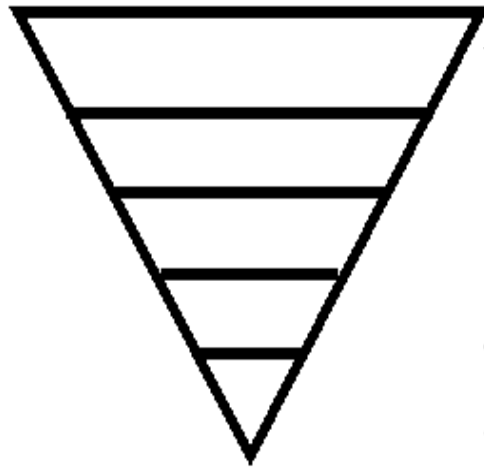
Principles Underlying Decision-Making

- Person Centered
- Least Restrictive Alternatives and Environments
- Informed Consent
- Substituted Judgment
- Best Interest

Person Centered

- Desirable Lifestyle
- Desirable experiences
- Quality of life
- Dreams, desires, and meaningful experiences

Least Restrictive



Supported Decision Making

Power of Attorney

Representative Payee

Conservatorship

Guardianship

Informed Consent

- Ability to make and communicate decision
- Understands relevant information including risks and benefits
- Decision is voluntary not coerced

Important Considerations for Substituted Judgment

- Promotes values of self-determination
- Considers well-being of individual
- Least restrictive alternative

Best Interest

- Standard of decision making
 - Least intrusive
 - Least restrictive
 - Knowledge of individual's current and previous expressed desires

Adolescents with Disability

- Plan for assuming adult rights and responsibilities
- Decision-making transfers to individual at age 19
- Recognition of decision-making assistance other than guardianship

Adults with Cognitive Impairment

- Acquired disability (Traumatic Brain Injury, age related dementia, spinal cord injury)
- Change in circumstances for individual with existing disability
- Onset of Alzheimer's Disease

Supported Decision Making

- Disability does not require formal decision making assistance
- Friends, family, support team
- Assistance from others within the community



Forms of Substituted Judgment

- **Power of Attorney** (Uniform Power of Attorney Act, Neb. Rev. Stat. §§30-4001 – 30-4045)
- **Representative Payee** (Title XVI, Social Security Act)
- **Conservatorship** (Conservatorship & Guardianship, Neb. Rev. Stat. §30-2601 – 30-2661)
- **Guardianship**

Guardianship

- Court appointed; terminated
- Periodic reporting requirements
- Decision making about the person (may also make decisions about the person's money and property if also a Conservator)

Guardianship

Guardianship should be used sparingly, precisely because Guardians have so much power. (NebGuide)

- Limited guardianship
- Full guardianship (most restrictive of all substituted decision making)

Considerations...

- If a parent becomes a guardian or assists in decision-making for an adult son or daughter, the role changes.
- Any person who chooses to become a guardian should consider the time required and their own willingness to serve in this role
- The person is the Guardian's primary responsibility
- The person must be included in decision making to the fullest extent possible
- Guardians must consider the balance between a desire to protect the person and the recognition that there must be risk to have a full, satisfying life
- The guardian works to ensure that placement is in the least restrictive alternative

The need for a Guardian should be reassessed regularly

- As people have learned how to make informed decisions they may have:
 - Overcome the need for a guardian
 - The opportunity to change the guardianship from full to limited
- The guardian has a duty to return to the court to legally reduce or remove the guardianship if it is no longer necessary!

Evaluative Criteria for Decision-making

- What is the issue and what does it mean for the person?
- Why is the action necessary?
- Has the person been informed?
- What are the person's preferences?
- What is the outcome of this decision?
- What is the benefit of this decision?

Evaluative Criteria for Decision-making

- Why now, not later?
- What will happen if no decision is made?
- Are there any alternatives?
- Is this the least restrictive alternative?
- What are the risks in the decision?
- What justifies the decision?



An Introduction to the Office of Public Guardian

Maria Fischer-Lempke, J.D.
January 12, 2016



What We Do: The Role of the Office of Public Guardian

The Office of Public Guardian serves when:

- It is established the person needs a guardian (guardianship is necessary; no alternatives to guardianship are appropriate)
- There is no one else to serve in the role of guardian (last resort)
- The Office of Public Guardian has capacity

This role is fulfilled by:

- 12 Associate Guardians
 - Capacity for average of 40 persons each
- Court visitors/Guardians ad litem

Volunteer Court Visitor Program



- Volunteer recruited and trained by our office
- Used to help determine least restrictive alternative
- Provide more information to judge

Process

- When a petition is filed with OPG a court visitor is assigned by the county court
- Completes an interview process with potentially incapacitated person and any other interested parties
- Gathers all information regarding the potentially incapacitated person's life using a screening tool
- Compiles all information in to a report then submits to the court

Office of Public Guardian Service Areas





Fulfilling Our Mission – Additional Responsibilities of the OPG



The Office of Public Guardian also provides:

- **Education**
 - To all guardians and conservators
 - Court visitor training
 - About rights within the process
- **Information & Support**
 - About the Office of Public Guardian
 - About guardianship, conservatorship, and alternatives
 - To all guardians and conservators
- **Recruitment**
 - Successor guardians and conservators
 - Court visitors

For more information

The Arc of Nebraska
215 Centennial Mall South
Suite 508
Lincoln, NE 68508
402-475-4407 (office)
402-416-8909 (cell)
www.arc-nebraska.org

University of Nebraska
Extension Office
<http://www.extension.unl.edu/guardianship/>

Disability Rights Nebraska
134 S. 13th St., Suite 600
Lincoln, NE 68508
<http://www.disabilityrightsnebraska.org/>

402-474-3183 or
1-800-442-6691

State of Nebraska Office of Public
Guardian
Nebraska Supreme Court
PO Box 98910
Lincoln, NE 68509
402-471-2862
<https://supremecourt.nebraska.gov/11541/office-public-guardian>

QUESTIONS??

Documents provided by email or
Download from the Webinar



THANK YOU
to
Pat Cottingham
and
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For More Information Contact:



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Evaluation



- Please complete the evaluation.
- It will appear on your computer at the close of the webinar.
- Future funding and support of PTI Nebraska programs benefit from your honest evaluations
- Changes to programs come through comments on evaluations
- <http://www.surveymonkey.com/s/PTIwebinar>