

Office of Elder Justice in the Courts

Alternatives to Guardianship



Speakers

- Judge Frank Ruggiero, Lackawanna County
- Judge Richard Hughes, Luzerne County
- John Kennedy, Esq.
- Keith Hinkel, Assistant Director - OEJC



Agenda

- Introduction to the Advisory Council on Elder Justice in the Courts and the OEJC
- Legislative Efforts in PA (Act 61 of 2023)
- Review of Alternatives to Guardianship

Aging Population in PA

- 25.2% of PA's population is age 60 or over
- 2.8 million older adults in PA
- In the U.S., by 2035, there will be 78 million people 65 years+, compared to 76.4 million under the age of 18

TIMELINE OF PENNSYLVANIA SUPREME COURT'S ELDER JUSTICE INITIATIVE



Advisory Council on Elder Justice In The Courts

- Chair: Judge Lois Murphy
- Vice-Chair: Judge Sheila Woods-Skipper
- Supreme Court Liaison: Chief Justice Debra Todd
- Members include judges, elected leaders, advocates, and experts in various fields serving older people from across the Commonwealth

Advisory Council on Elder Justice in the Courts

Areas of focus include:

- Guardianship Reform and Monitoring of Guardians
- Elder Abuse and Exploitation
- Access to Justice

Highlights of Accomplishments

- Elder Abuse and Guardianship Bench Books (distributed to **all** PA judges)
- Guardianship Tracking System (GTS)
- Legislative Advocacy, including Act 61 of 2023
- Extensive training, rule changes, best practices for law enforcement and prosecution of crimes against older adults, enhanced access and tools for litigants and witnesses, increased visibility, and ACL guardianship reform grant



Committed to assuring that Pennsylvania courts are **accessible** and **educated** in best practices to address issues of **elder abuse and exploitation** as well as **guardianship reform** and **monitoring guardians**.

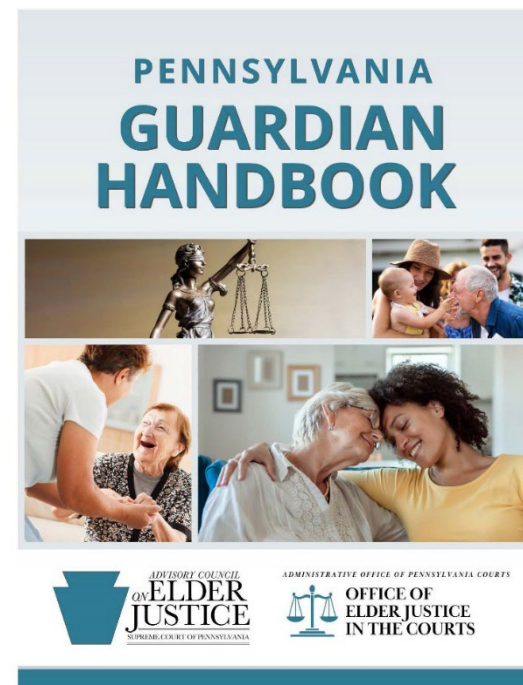
Elder Justice Innovation Grant – Improving Guardianship and Promoting Alternatives to Guardianship in Pennsylvania

Three overarching goals:

1. Assure **due process** for the alleged incapacitated person in guardianship;
2. Improve guardian monitoring capabilities to **prevent abuse and exploitation**; and,
3. Promote **alternatives to guardianship**.

Elder Justice Innovation Grant Project Highlights

- GTS data analysis and enhancements
- Host Guardianship Justice Summits
- Creation of the Pennsylvania Guardian Handbook and Training Videos
- Guardianship Monitoring
- Legal services pilot project



Legislative Efforts in Pennsylvania

Act 61 of 2023

Act 61 Implementation

Passed: December 13, 2023

Sponsored By:

Sen. Lisa Baker (R-Luzerne) and
Sen. Arthur Haywood (D-Montgomery)

Went into effect: June 11, 2024

Impact of Act 61



Appointment of Counsel

Courts are **required to appoint an attorney** for the AIP/IP in all guardianship hearings unless the AIP/IP obtains their own.



Appointment of Counsel

At the judge's discretion, attorney costs can be paid by:

- The estate of the AIP/IP; or
- The county (regardless of the AIP/IP's ability to pay for their own counsel)



Appointment of Counsel

Zealous Advocacy:

Attorneys are to represent the AIP/IP's expressed wishes and to zealously advocate on their behalf.



Certification of Professional Guardians

- An individual seeking guardianship of three or more IPs **must be certified** and provide proof of the certification to the court.
- **National certification**; for example, Center for Guardianship Certification (CGC).



Certification of Professional Guardians

- **Not required for family/lay guardians** who are guardian of family members
- Certification requirement **can be waived** by judge if guardian proves qualified due to proven experience or expertise.

Review Hearings

Courts must hold a **review hearing within one year of a new guardianship appointment** if the AIP shows signs that their condition could improve.



Review Hearings

This review hearing option is mandatory in situations where the AIP/IP has **the potential to recover capacity**, such as short-term health related incapacity (for example, a car accident or medical procedure).

Alternatives to Guardianship

In a guardianship hearing, the court must explore possible **alternatives to guardianship** prior to rendering a guardianship decision.



Alternatives to Guardianship



Why Should an Alternative to Guardianship be Sought?

- Often petitioners' primary concern is making health care decisions
- Finances often are managed by SS rep. payee, or Special Needs Trust
- No annual reports to review from cases in which a less restrictive alternative is recognized because no guardian appointed
- The need for a guardian may only be temporary
- The emotional impact and loss of autonomy

Expert Reports

- When should an Expert Report be provided to the court?
- How will the Expert Report be used by the court?
- Testifying at the hearing



Alternatives to Guardianship

- **Less restrictive alternatives include, but are not limited to (from Act 61 language):**
 - i. Advance directives such as durable power of attorney or trusts.
 - ii. Living wills
 - iii. Health care powers of attorney.
 - iv. Health care representatives.
 - v. Financial powers of attorney.
 - vi. Trusts, including special needs trusts.
 - vii. Representative payees for individuals receiving Social Security benefits.
 - viii. Pennsylvania Achieving a Better Life Experience accounts.
 - ix. Mental health advance directives.

Financial Power of Attorney (POA)



- Durable Financial POA
 - Principal or grantor authorizes agent to make financial, legal, and/or business decisions on behalf of the principal.
- May be “springing”



Social Security Representative Payee

- AKA “Rep Payee”
- Manages Social Security or SSI payments
- Funds must be used to benefit the recipient
 - Food
 - Clothing
 - Housing
 - Medical care
 - Etc.

Joint Bank Account

- The resident may have an existing joint bank account with a family member or trusted person
- This joint account may be used to manage SS Rep Payee funds
- Can allow a person to maintain financial autonomy while having a trusted person help manage the account and budgeting

Veteran's Administration (VA) Fiduciary



Veterans who are unable to manage their financial affairs can nominate a person they trust to serve as *fiduciary*.



VA investigates before approving and appointing a fiduciary.



Limited Guardianships

- The guardian only has certain court-specified decision-making powers.
- Person with a guardian keeps all personal decision-making rights not specifically assigned to a guardian by court order.
- PA courts are legally obligated to consider limited guardianships first [*PA statute 20 Pa.C.S. § 5512.1(a)*].

Medicaid application is pending or filed, do you need a guardian?

1. Consider requesting a subpoena or court order to obtain financial records
2. Consider requesting a limited guardianship to obtain financial records and make application for medical assistance.
3. Are there any other less restrictive alternatives to guardianship that could meet the person's needs? Is there an agent under a power of attorney who could assist?

Who Makes Health Care Decisions When You Cannot?

Advance Directives, Healthcare POAs,
and Health Care Representatives



Advance Directives for Health Care Decisions – General Information

- Legal document
- Instructions for medical care
- Created prior to incapacity

Advance Directives for Health Care Decisions - Living Will

- Legal document
- Informs doctors about patient's preferred treatment options



Advance Directives for Health Care Decisions - Health Care POA

- Grants agent power to make health care decisions on behalf of the person
- POA can specify the spectrum of care, including routine care, end-of-life care, etc.

Advance Directives for Health Care Decisions: Physician Order for Life Sustaining Treatment (POLST)

- Document created by a doctor
- Signed by doctor and patient
- Establishes patient's preferences for end-of-life care



Advance Directives for Health Care Decisions: Mental Health Advance Directive and POA

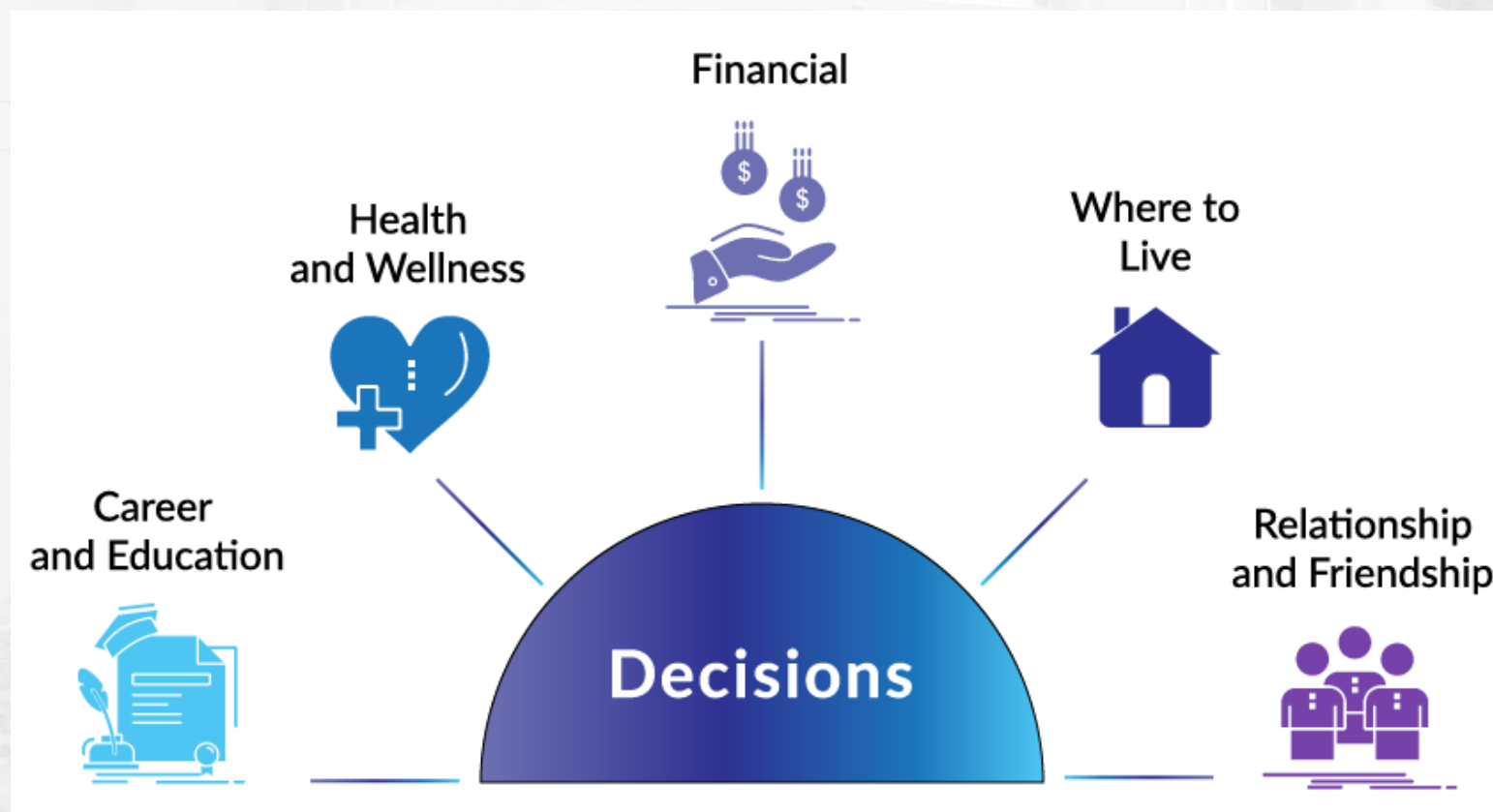
Provides specific guidance on a person's preferred treatment, medication, and providers during a mental health crisis



Health Care Representatives

- Health Care Agents and Representatives Act
- Priority order:
 - Spouse + adult children of person
 - Other adult children (children of spouse)
 - Parents
 - Adult siblings
 - Adult grandchildren
 - Other adults (friends or partners)
- HIPAA Impact (45 CFR 164.502(g))

Supported Decision Making



Elder Justice in the Courts

For more information about the Advisory Council on Elder Justice in the Courts or the Office of Elder Justice in the Courts visit: <https://www.pacourts.us/judicial-administration/court-programs/office-of-elder-justice-in-the-courts>

or

Google: Office of Elder Justice in the Courts in PA

Contact the OEJC or John Kennedy regarding questions, information on available resources or presentation opportunities

OEJC@pacourts.us

John N. Kennedy, Esquire
KENNEDY, PC Law Offices

www.kennedypc.net

(877) 833-7100

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