

### Guardianship is Not the Only Option:

Supporting Decisions in Adulthood







# WELCOME

- Presenters
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#### Today's Topics

- What Happens at Age 18?
- What is Adult Guardianship?
- Why Think About Other Options First?
- What is Supported Decision-Making?
- What are Other Options in:
  - Education?
  - Our Health Care?
  - Finances?

#### What happens at 18?

- In Massachusetts, people become legal adults when they turn 18
- Under the law, they get to make their own decisions, regardless of whether or not they have a disability
- Schools call this "Transfer of Rights"



## Main Legal Tools for Decision-Making in Massachusetts

- Supported Decision-Making
- Shared Educational Decision-Making Authority
- Health Care Proxy
- Durable Power of Attorney
- Delegation of Educational Decision-Making Authority
- Representative Payee
- Court-appointed Guardian or Conservator
  - Temporary Guardianship
  - Limited Guardianship
  - Conservatorship
  - Guardianship
  - Rogers Guardianship





#### What is Guardianship for Adults?

- Different than guardianship of a child
- A formal legal process where a court decides an adult is "incapacitated" and that someone else (a "guardian") must be appointed to make all or some decisions for them.
- Guardianship = Court
- Different kinds in Massachusetts
  - Temporary
  - Limited Guardianship
  - Conservatorship
  - Guardianship
  - Rogers

#### What does "Incapacitated" Mean in Massachusetts?

The law defines an "incapacitated person" as an individual who:

- For reasons <u>other than advanced age or minority</u>
- Has a <u>clinically diagnosed</u> condition
- That results in the <u>inability to receive and evaluate information</u> or <u>make or communicate decisions</u>
- To such an extent that the individual <u>lacks the ability to meet</u> <u>essential requirements</u> for physical health, safety, or self care
- Even with appropriate technological assistance
  - Mass. Gen. Laws c. 190B § 5–101(9).

#### **HOWEVER - Capacity is:**

NOT "All or nothing" or based solely on diagnosis

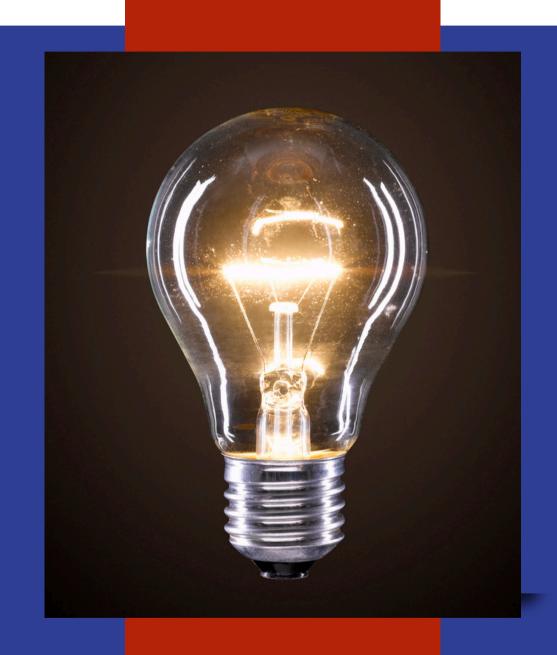




- Guardianship is <u>NOT</u> the <u>only</u>
  option to consider
- Guardianship is <u>NOT</u> just a <u>piece</u>
  of paper
- Guardianship is **NOT** all powerful
- Guardianship is <u>NOT</u> a guarantee of safety
- Guardianship is <u>NOT</u> without downsides

#### Why Explore Other Options First?

- It's the law Least restrictive alternative doctrine
- Guardianship can be time-consuming, complex, costly
- Guardianship can be difficult to end or change
- Decision-making is a learned skill
- Self-determination is linked to better life outcomes



#### What Are Other Options?

- Supported Decision-Making
- Shared Educational Decision–
  Making Authority
- Health Care Proxy
- Durable Power of Attorney
- Delegation of Educational Decision-Making Authority
- Representative Payee
- And MORE!





## What is Supported Decision-Making?

- People make their own decisions, with the help of others they pick and trust.
- Supporters provide guidance and assistance.
- The person keeps their legal rights.
- The person builds decision-making skills over time and learns from mistakes.
- It can be formal or informal.
- It is **flexible** and can change over time.
- It can be **used in any state**, including Massachusetts.

#### What is Supported Decision-Making NOT?

- It is **NOT** someone else making decisions for and instead of the person.
- It is **NOT** the person making decisions **alone**, without any help.
- It is **NOT** the person making decisions **only** if the supporters agree.
- It is <u>NOT</u> "one size fits all."
- It is <u>NOT</u> only for people with certain kinds of disabilities



#### Common Questions about Supported Decision-Making

- Is it new?
- Who can use it?
- How is <u>different</u> from substitute or surrogate decision-making?
- Is it <u>legal</u>?
- Is it safe?





Start the Conversation

Identify supporters who can and want to help.

Plan and communicate

Consider writing down and signing the plan

Share the plan with people who need to know

#### Practice Tips for Supported Decision-Making

- Supporters work with the person to find out:
  - What are the person's goals?
  - What help does the person want and need?
  - Who does the person want to help?
  - How does the person want the help to be given?
  - What will it take to make their own decisions with support?
- Supports can also include:
  - Behavioral and mental health support
  - Communication aids
  - Personal supports
  - Educational resources
  - Written agreements or plans
  - And more!



# Huck's Perspectives on Supported Decision-Making



### Common Legal Tools to Use Along with Supported Decision-Making

- Release of Information Forms
- Health Care Proxy
- Durable Powers of Attorney





### What are Other Options in Education?

- Supported Decision-Making
- Shared Educational Decision-Making
- Delegated Educational Decision-Making

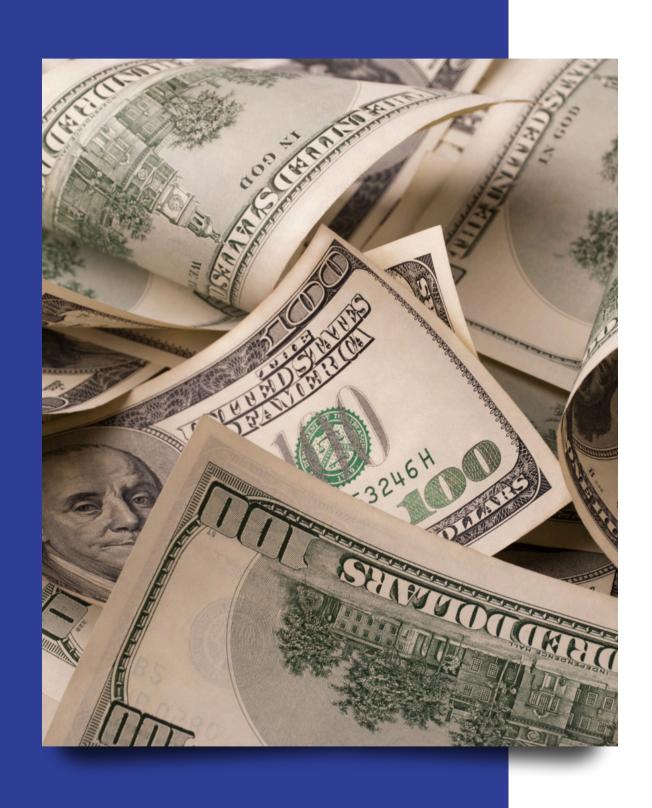
#### Massachusetts 2024 IEP Form

DECISION-MAKING OPTIONS FOR STUDENT*	
Complete for student who has turned 18. Please indicate the decision-making option that the student or court-appointed legal guardian has selected:	
	The student will make their own educational decisions.
	The student will share decision-making with their parent, caregiver, or other adult.
	Individual with whom the student will share decision-making:
	The student has delegated decision-making to their parent, caregiver, or other adult.
	Individual to whom the student has delegated decision-making:
	A court has appointed a legal guardian for the student who will make educational decisions.
	Name of court-appointed legal guardian:

#### What Other Options in Health Care?

- Supported Decision-Making
- Health Care Proxy
- MOLST/POLST

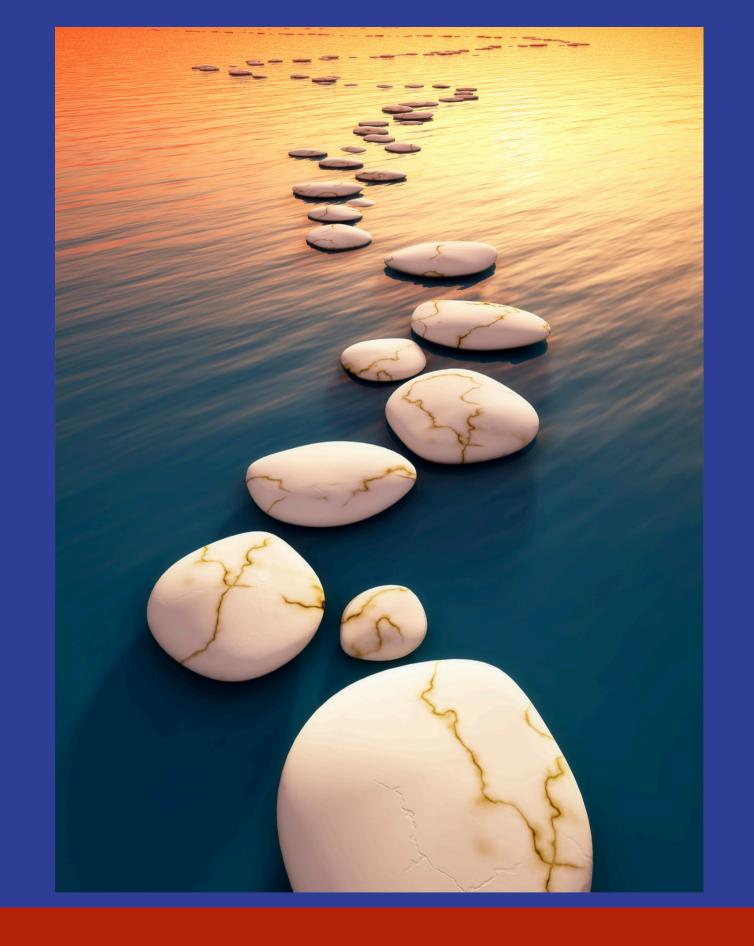




### What Are Other Options in Finances?

- Supported Decision-Making
- Durable Power of Attorney
- ABLE Accounts
- Joint Bank Accounts
- Representative Payees
- Trusts

- Making decisions changes your life.
  - Support your loved one in building capacity to make decisions over time.
- "You can't make decisions based on fear and the possibility of what might happen" - Michelle Obama
  - Explore alternatives first before considering guardianship.



#### Resources

- <a href="https://supporteddecisions.org">https://supporteddecisions.org</a>
- https://www.wearemass.org/supporteddecision-making
- <a href="https://www.conexioneslatinx-ma.org">https://www.conexioneslatinx-ma.org</a>
- <a href="https://www.dlc-ma.org">https://www.dlc-ma.org</a>



#### Questions Now or Later

- Conexiones Latinx-MA
  - Keila Torres, 413-419-8008, <a href="mailto:hola@conexioneslatinx-ma.com">hola@conexioneslatinx-ma.com</a>
- Center for Public Representation
  - Morgan Whitlatch, certified to practice law in Massachusetts
  - Megan Rusciano, licensed to practice law in Maryland only
  - 413–586–6024, <u>SDM@cpr-ma.org</u>
- Huck Talwar, <u>huck@youthmovenational.org</u>



#### Thank you!

- Please complete our Participant Survey!
  <a href="https://forms.office.com/r/qTfvEXPvzP">https://forms.office.com/r/qTfvEXPvzP</a>
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