

Guardianship & Supported Decision-Making Position Statement

The Texas Council for Developmental Disabilities supports increasing opportunities for, and protecting the civil rights and well-being of, people with developmental disabilities. The vast majority of people with disabilities, including those with intellectual and developmental disabilities are able to make important decisions, independently or with support, without the need for a guardian.

Guardianship is a legal proceeding that removes the civil rights and privileges of a person by assigning control of his or her life to someone else. The broad definition of incapacity in Texas Estates Code has a discriminatory impact by enabling a court to appoint a guardian if an adult has a physical or mental condition and is substantially unable to provide food, clothing, or shelter, to care for their physical health, or manage their own financial affairs. Even though individuals with a disability may need supports and services or assistance from others to provide for such needs, they should still be able to maintain the right to make choices about these aspects of their lives.

Recent legislative changes promoting alternatives to guardianship, including supported decision-making and a bill of rights for individuals under guardianship, provide the opportunity to significantly advance the rights and protections for individuals with disabilities. To achieve the goals of guardianship reform there must be statewide monitoring and accessible and useable information, training and technical assistance provided to individuals with disabilities, families, courts, attorneys, guardians, educators, medical providers and state and local providers of services and supports.

The Texas Council for Developmental Disabilities supports changes to the guardianship system in Texas that would promote the self-determination, well-being and rights of individuals with disabilities:

- A person should not be presumed to need a guardian because of advanced age or the presence of a physical or mental disability.
 - The definition of incapacity in state law should be revised to consider the person's everyday functioning, values, preferences and cognition rather than their medical diagnosis.
 - The physical examination and documentation for incapacity should be based on functional abilities with or without services and supports.
 - Guardianship based solely on the diagnosis of intellectual disability should be prohibited.

- The court should be required to explain the bill of rights for persons under guardianship in a manner accessible to the individual.
- The term “ward” should be changed to “individual under guardianship.”
- A guardian should be required to meet with the person and their physician before consenting to the administration of psychoactive medication for that individual except in a medication-related emergency as defined by the Texas Health and Safety Code.

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