

## Options for Supporting Decision-Making and Independence

A guardianship is not the only option if someone needs help making life decisions. There are many options available, varying in formality and legal involvement. Each person's abilities and needs should determine the option(s) that are the most appropriate to provide the maximum opportunity for self-determination. All options, including guardianship may, to some extent, be combined in a way to best meet the needs of the person.

### **What are some options for supporting decision-making and independence?<sup>1</sup>**

- **Informal supports:** ideas or technology to help support or accommodate someone in areas where they might need help. Examples include setting up automatic bill pay for someone who needs assistance with remembering to pay bills, or pill timers or apps to remind someone to take medication.

**Supported Decision-Making Agreement:** a way to formalize accommodations in the decision-making process. The person appoints "supporters" to assist the person with decision-making in

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<sup>1</sup> This is not an exhaustive list, and IDR does not recommend or endorse any particular instrument for all individuals.



a manner chosen by the person, in areas chosen by the person. The person retains ultimate decision-making authority.

- **Authorizations to share information:** a way for the person to allow someone else to receive information about or participate in the person's care, services, education, or assets. This can help others support the person in making decisions.
- **Team-Based or Shared Decision-Making:** Often used in specific service contexts, decisions are made using a person-centered approach, but the team may come to consensus regarding decisions.
- **Representative Payee:**<sup>2</sup> Allows someone to oversee and manage a person's social security benefits.
- **Agency or Contractual Agreements:** These types of documents can give someone else the power to make decisions on behalf of the person. The person appoints whomever they choose.
  - **Power of attorney:**<sup>3</sup> a written agreement that allows certain legal powers and decision-making authority to someone else in certain circumstances. It is customizable, generally does not remove decision-making authority from the individual, and can generally

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<sup>2</sup> 42 U.S.C. § 1381-1383f

<sup>3</sup> Ind. Code § 30-5-1 *et seq.*



be revoked at any time. A person must have capacity to consent to these arrangements.

- **Healthcare representative:**<sup>4</sup> a limited document that authorizes someone to make certain healthcare decisions on another's behalf only when that person is unable to consent to medical treatment.
- **Educational surrogate:**<sup>5</sup> allows a parent or guardian to participate in a person's educational decision-making without the need for a guardianship.
- **Living wills and advanced directives:**<sup>6</sup> these documents allow an individual to authorize another person to make certain financial, property, and healthcare decisions under certain circumstances – often a triggering event (for example, when symptoms of a disability are in relapse); they are often easier to alter or dissolve than a guardianship.
- **Protective Order:**<sup>7</sup> A court may issue, without the appointment of a guardian, a protective order for the benefit of a person who has been determined by a court to be incapacitated as a way to protect a person's property or business affairs.
- **Temporary Guardianship:**<sup>8</sup> In an emergency situation where the welfare of a person requires immediate action and no other person is able to act, a court may appoint a temporary guardian for a period not to exceed 90 days.

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<sup>4</sup> Ind. Code § 16-36-1 *et seq.*

<sup>5</sup> 511 IAC 7-32-32.

<sup>6</sup> Ind. Code § 16-36-4.

<sup>7</sup> Ind. Code § 29-3-4-1.

<sup>8</sup> Ind. Code § 29-3-3-4. Upon notice and hearing, with good cause shown, a court may grant one extension of the temporary guardianship for not more than an additional 90 days.



- **Limited Guardianship:**<sup>9</sup> A court may limit the appointment of a guardian to a particular area or task; for example, a limited guardianship over the person's finances and property where the person retains all other rights.

## **How is an options for supporting decision-making and independence established?**

Most formal options for supporting decision-making and independence require specific factors to be met in order to make the instrument legally enforceable under Indiana law. Although the assistance of an attorney is generally not required to establish one of these options, it is strongly recommended.

Additionally, before planning to establish one of these options, it is strongly recommended to seek input from trusted individuals that are familiar with the needs and abilities of the person. This can include current or former teachers, medical providers, support team members, friends and family, and others. The person should be supported and encouraged to have as much self-determination as possible and to use the least restrictive options available to provide support.

Finally, should a substitute decision-maker be needed, decision-making authority should only be granted to someone trustworthy, as exploitation is always a possibility when an individual is given authority to make decisions on behalf of someone else.

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<sup>9</sup> Ind. Code § 29-3-5-3.