

Welcome to Adulthood: Now What?

Faculty

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Maximizing Independence

- **Transition issues**
- **Medicaid waivers**
- **General advocacy strategies**

Planning for Legal Adulthood

- **Guardianship and some alternatives**
- **Special needs trusts**

The Effects of a Full Guardianship

- **Guardianship**
 - **The probate court and guardian have ability to make decisions on behalf of the ward**
 - **How money is spent**
 - **Where person lives**

The Effects of a Full Guardianship

- **Social interactions**
- **Employment**
- **Ward is virtually stripped of all decision-making authority**
- **Guardian can overrule ward's wishes**

The Effects of a Full Guardianship

- **Conservatorship**
 - Similar to guardianship but limited to financial decisions
 - Legal standard – person with disability does not have ability to make decisions about financial affairs

The Effects of a Full Guardianship

- Conservator controls the property of the ward
- Must use the property for benefit of the ward
- Conservator can control how much money is given to ward

Alabama Law Favors Limited Guardianship

- Guardian has specific authority
- Usually spelled out in the order from the Probate Court
- Should be limited to area where person needs assistance in making decisions

Alabama Law Favors Limited Guardianship

- **Example**
 - Person does not want to live in a nursing home

Alternatives to Guardianship

- **Power of Attorney**
- **Limited bank account**
- **Healthcare Power of Attorney**
- **Trust**

Special Needs Trust

- **Overview**
 - Designed to preserve benefits
 - Many benefits such as SS and Medicaid have severe income and asset limitations

Special Needs Trust

- **Trust has limitations**
 - **What proceeds from trust can be used for**
 - **Any left after beneficiary's death must go back to Medicaid**

Special Needs Trust

- **Establishing a Special Needs Trust**
 - **Alabamafamilytrust.com**
 - **Private Attorney**

Special Needs Trust

- **Estate Considerations**
 - **Don't leave money or property to child with a disability the same as other children**
 - **Set-up a special needs trust to preserve the person's benefits**

Special Needs Trust

- **Make sure estate planner has experience in planning for needs of individuals with disabilities**

What Is Medicaid?

- **Medicaid is a joint state / federal program that provides medical assistance for certain individuals and families with low income and resources**

What Is Medicaid?

- **Centers for Medicare and Medicaid Services ("CMS") is the federal agency that oversees states' Medicaid programs**
- **In Alabama, for every Medicaid dollar spent, 70 cents is funded by the Federal Government, while the state funds 30 cents**

What Is Medicaid?

- **Medical assistance means the Alabama Medicaid Agency provides funding for services under the State plan or a waiver**

Who Is Eligible for Medicaid?

- **Alabama residents who:**
 - **Meet income and age requirements**
 - **The requirements vary by program**
 - **For certain programs, must also have a specific diagnosis or condition**

What Is a Medicaid Waiver?

- **Referred to as a “Home and Community-Based Waiver” (HCBW)**
- **Allows persons to receive services in the community as opposed to an institutional setting**

What Is a Medicaid Waiver?

- **Institutional settings include:**
 - **Nursing homes and intermediate care facilities for persons with intellectual disabilities (Partlow)**

What Is a Medicaid Waiver?

- **Provides services not usually covered by the Medicaid program, as long as these services are required to keep a person from being institutionalized**

Alabama’s HCBW Programs

- **Elderly and Disabled (“E & D”) Waiver**
- **State of Alabama Independent Living (“SAIL”) Waiver**
- **Intellectual Disabilities (“ID”) Waiver**
- **Living At Home (“LAH”) Waiver**
- **HIV / AIDS Waiver**

Alabama's HCBW Programs

- **Technology Assisted ("TA") Waiver for Adults**
- **Alabama Community Transition ("ACT") Waiver**

Targeted E & D Waiver Population

- **Persons who:**
 - **Are at the point of discharge from a general acute care facility, and without the availability of waiver services would be eligible for placement in a nursing facility**

Targeted E & D Waiver Population

- **Reside in the community, but are in danger of institutionalization, when their disabilities and level of functioning are such that, without the availability of waiver services nursing facility placement would probably occur**

Targeted E & D Waiver Population

- **Are residents of a nursing facility who opt to leave that facility because of available E & D waiver services**

ID and LAH Waiver Target Population

- **Persons who are diagnosed with an intellectual disability**

ID and LAH Waiver Target Population

- **Alabama defines intellectual disability as:**
 - **"significantly sub-average general intellectual functioning (IQ lower than 70 on a standardized intelligence test), existing concurrently with deficits in adaptive behavior that manifested in the developmental period (before the age of 18 years, for mental retardation)."**

–Ala. Admin. Code 580-5-30-.02(3)(a)(1).

ID and LAH Waiver Target Population

- This is an outdated (1986) definition of intellectual disability
- Alabama's definition of intellectual disability is an issue that is often contested in the appeals process

SAIL Waiver Target Population

- SAIL waiver services are provided, but not limited, to persons with the following diagnoses:
 - Quadriplegia
 - Traumatic brain injury
 - Amyotrophic lateral sclerosis
 - Multiple sclerosis

SAIL Waiver Target Population

- Muscular dystrophy
- Spinal muscular atrophy
- Severe cerebral palsy
- Stroke

SAIL Waiver Target Population

- Other substantial neurological impairments, severely debilitating diseases, or rare genetic diseases
 - Lesch-Nyhan Syndrome

TA Waiver Target Population

- Individuals who are age 21 or older with complex medical conditions who are ventilator dependent or who have tracheostomies and are at risk of nursing home placement

ACT Waiver Target Population

- Individuals with disabilities or long-term illnesses who currently live in a nursing home and desire to transition to a home or community-based setting

Common Waiver Services

- Residential habilitation
- Day habilitation
- Supported employment
- Therapy services
 - Occupational, Speech, Behavioral, and Physical

Common Waiver Services

- Respite care
- Personal care
- Homemaker services
- Environmental modifications
- Assistive technology
- Skilled nursing

What If I Am Told I Am Not Eligible for a Particular Waiver

- DO NOT GET DISCOURAGED
- You have appeal rights, including a right to a fair hearing
- Act quickly
 - Time limit to appeal is limited
- Should at least try to find a lawyer

What If I Am Told I Am Not Eligible for a Particular Waiver

- Contact ADAP, legal services, or private counsel

Make Your Own Decisions

- Remember, laws favor limited guardianship and retention of maximum amount of decision-making authority
- If someone seeks to become your guardian, you have a right to have a lawyer

Make Your Own Decisions

- The Court will also appoint a Guardian Ad Litem who should:
 - Represent interest of the Ward
 - Represent potential Ward with same commitment as any other client

Make Your Own Decisions

- Should oppose the guardianship if it is in best interest of potential Ward
- Should seek limited guardianship to retain as much freedom of choice as possible

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Helpful Websites

- **Alabama Medicaid Agency:**
www.medicaid.alabama.gov/
- **Alabama Dept. of Mental Health:**
www.mh.alabama.gov/
- **Alabama Dept. of Public Health:**
www.adph.alabama.gov/

Helpful Websites

- **Alabama Dept. of Senior Services:**
www.adss.alabama.gov/
- **Alabama Dept. of Rehabilitation Services:** **www.adrs.alabama.gov/**
- **Alabama Administrative Code:**
www.alabamaadministrativecode.state.al.us/alabama.html
- **ADAP:** **www.adap.net**