ABUSE IN LATER LIFE EDUCATION SERIES FOR ADVOCATES:
POWERS OF ATTORNEY
AND GUARDIANSHIP

Office on Violence Against Women
Abuse in Later Life Program

This project was supported by Grant No. 2014-TA-AX-K050 and 2016-TA-AX-K071 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.
As a Result of This Training, Participants Will Be Better Able to:

- Identify and describe documents and processes that designate a substitute decision maker to act on an older survivor’s behalf
- Recognize the warning signs of abuse by a substitute decision maker
- Identify national and local legal resources available to address power of attorney and guardianship concerns

Substitute Decision-making

- Health Care Power of Attorney
- Durable Power of Attorney for Finances
- Guardianship/conservatorship
- Supported Decision-Making
### Commonly used terms

<table>
<thead>
<tr>
<th>Term</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proxy</td>
<td>A person, or a written document, with the authority to represent someone else</td>
</tr>
<tr>
<td>Agent</td>
<td>A person who acts on behalf of another person</td>
</tr>
<tr>
<td>Principal</td>
<td>The person who has designated someone else to act on their behalf</td>
</tr>
<tr>
<td>Ward</td>
<td>A person who is subject to guardianship</td>
</tr>
</tbody>
</table>

### Powers of Attorney
Powers of Attorney

Health Care Powers of Attorney

Written document naming another person (the “agent” or “proxy”) to make decisions about health care:

- Anybody principal chooses
- Starts immediately or upon incapacity
- Can include mental health decisions
- As broad or as limited in scope as principal desires
Health Care Power of Attorney (Slide 1)

**Benefits**
- Principal can direct their own medical treatment
- Decision-maker the principal *wants*; can even designate future guardian
- Family and doctors will know in advance what principal wants done
- Revocable (if competent)

Health Care Power of Attorney (Slide 2)

**Risks**
- A significant amount of power to agent, especially if principal is or is perceived to be limited in capacity
- Safety measures exist but are hard to monitor and enforce
- Essentially a license to exert power and control
Durable Power of Attorney for Finances

Written document naming another person (the “agent” or “proxy”) to manage legal and financial affairs:

- Anyone principal chooses
- Starts immediately or upon incapacity
- As broad or limited in scope as principal desires
- “Durable” = lasts beyond incapacity

Powers of the Agent (Slide 1)

- Spend principal’s money
- Cash checks
- Withdraw money from principal’s accounts
- Acquire assets on the principal’s behalf
- Apply for credit
Powers of the Agent (Slide 2)

- Sell property
- Enter contracts
- Incur debt
- Pursue insurance claims and legal actions

Limitations on Agent (Slide 1)

- Must keep money separate
- Must not stand to profit from any transaction
- Must keep records and provide accounting upon request
Limitations on Agent (Slide 2)

- Cannot make gifts of principal’s assets to themselves or anyone else—unless POA states otherwise
- Any other limitations principal chooses

POA Safety Measures

POAs are always revocable (if competent):

- “I revoke the authority of _____ to act as my agent pursuant to any and all POAs I have given prior to this date”
- Sign, date and notarize
- Publicize – distribute to banks, responsible family members, attorney, etc.
Benefits of Financial POAs

- Principal can direct their own legal/financial affairs
- Decision-maker the principal wants
- Prompts discussion and dissemination of information

Benefits & Risks of Financial POAs

- A huge amount of power to agent
- Essentially a license to exert power and control
- Safety measures exist but are hard to monitor and enforce
What Happens Without a Financial POA?

- In an emergency, bills may not get paid
- A court may step in and appoint a guardian and/or conservator
  - Much more significant loss of independence
  - Lose all legal ability to make decisions
  - May not be someone principal chooses

Guardianship
Guardianship and Conservatorship

Guardianship: “Incapacitated Person”

Any person impaired by reason of illness or incapacity to the extent that they lack the ability to make or communicate responsible decisions
Powers of a Guardian

- Same powers, rights and duties as parent to child (except liability to third parties)
  - Establish placement
  - Possession of personal property
  - Decisions re: medical care, treatment, services
  - Financial authority if no conservator
- Limited guardianship is sometimes an option

Guardianship (Slide 1)

**Benefits**

A capable, well-intentioned guardian can:

- Protect an incapacitated victim from future harm by perpetrator
- Pursue perpetrator accountability on victim’s behalf
Guardianship (Slide 2)

**Risks**
- Establishing legal incapacity is a serious deprivation of autonomy, and difficult to reverse
  - A huge amount of power to agent
  - Essentially a license to exert power and control
  - Safety measures exist but are hard to monitor and enforce

POA vs. Guardianship

**POA**
- Principal retains legal authority
- Agent must do as principal wishes—regardless of principal’s best interest
- No substituted judgment

**Guardianship**
- Ward has no legal authority
- Guardian must act in ward’s best interest—ward’s wishes are only advisory
- Requires substituted judgment
Signs of Abuse by Agent or Guardian

- Bills are not being paid; needed services are not being provided
- Guardian or agent can not or will not document expenditures or provide an accounting of the ward or principal’s assets
- A health care agent appears to be making decisions that are known to be counter to the principal’s wishes
- A guardian is making decisions that are not in the best interest of the ward
- A ward or principal exhibits other signs of abuse or neglect

Supported Decision-making

- Guardianship alternative
- Respects ability
- Preserves autonomy
- Improves quality of life
- Availability varies from state to state
- http://supporteddecisionmaking.org/
What if You Suspect Abuse by a Guardian or Agent?

Connect with local resources before you need them
- Elder law attorneys
- Courthouse staff (often probate court)
- Aging network staff
- APS
- Legal services providers
- County or state Human Services/Department on Aging staff
- Local CCR/FAST team

Summary

- Powers of Attorney, Guardianships, and Conservatorships can be beneficial for individuals who want or need a substitute decision-maker.
- These instruments may, however, facilitate abuse and exploitation if decision-making authority is granted to the wrong party.
- Before there is an emergency need for them, identify local procedures/resources to address or prevent abuse by substitute decision-makers.
Video Presenters

- Rebecca Henry
  Deputy Chief Counsel, Commission on Domestic and Sexual Violence, American Bar Association
- Alicia Aiken
  Executive Director, The Confidentiality Institute

Thank You

- Special thanks to Terra Nova Films for the ongoing working partnership with NCALL and the beautiful video production
- www.terranova.org

National Clearinghouse on Abuse in Later Life
Staying Connected to NCALL and Other Advocates

- Sign up for our enewsletter: http://oi.vresp.com/?fid=03fcc93262
- Join our listserv for advocates serving older survivors: ncall@ncall.us
- Join us on Facebook: www.facebook.com/ncall.us
- Join us on Twitter: www.twitter.com/ncall_us

National Clearinghouse on Abuse in Later Life (NCALL)

National Clearinghouse on Abuse in Later Life, a project of End Domestic Abuse Wisconsin: (Wisconsin Coalition Against Domestic Violence)

www.ncall.us | ncall@ncall.us
608-255-0539