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

Module 15

National Clearinghouse on Abuse in Later Life

2018

Office on Violence Against Women Abuse in Later Life Program

2

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As a Result of This Training, Participants Will Be Better Able to:

3

- 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

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Substitute Decision-making

4

- Health Care Power of Attorney
- Durable Power of Attorney for Finances
- Guardianship/conservatorship
- Supported Decision-Making

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Commonly used terms

5

Proxy	A person, or a written document, with the authority to represent someone else
Agent	A person who acts on behalf of another person
Principal	The person who has designated someone else to act on their behalf
Ward	A person who is subject to guardianship

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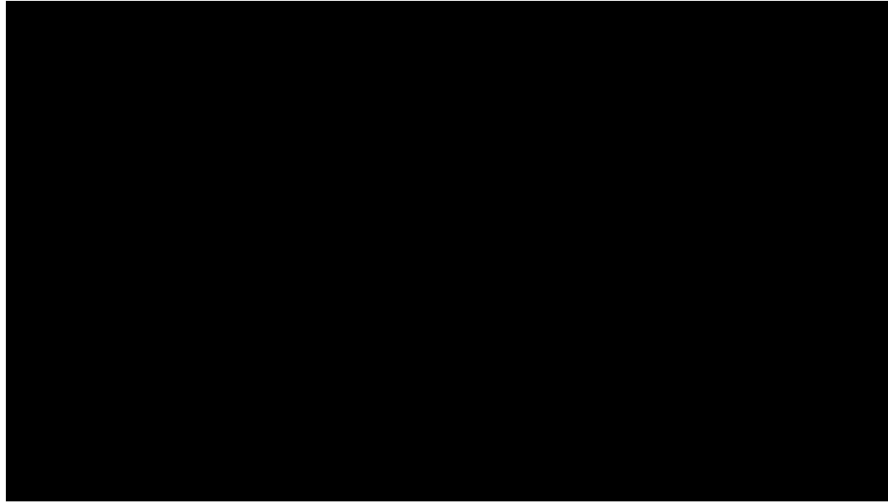
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Powers of Attorney

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Powers of Attorney

7



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Health Care Powers of Attorney

8

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

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Health Care Power of Attorney (Slide 1)

9

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)

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Health Care Power of Attorney (Slide 2)

10

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

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Durable Power of Attorney for Finances

11

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

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Powers of the Agent (Slide 1)

12

- Spend principal’s money
- Cash checks
- Withdraw money from principal’s accounts
- Acquire assets on the principal’s behalf
- Apply for credit

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Powers of the Agent (Slide 2)

13

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

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Limitations on Agent (Slide 1)

14

- Must keep money separate
- Must not stand to profit from any transaction
- Must keep records and provide accounting upon request

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Limitations on Agent (Slide 2)

15

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

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POA Safety Measures

16

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.

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Benefits of Financial POAs

17

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

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Benefits & Risks of Financial POAs

18

- 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

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What Happens Without a Financial POA?

19

- 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

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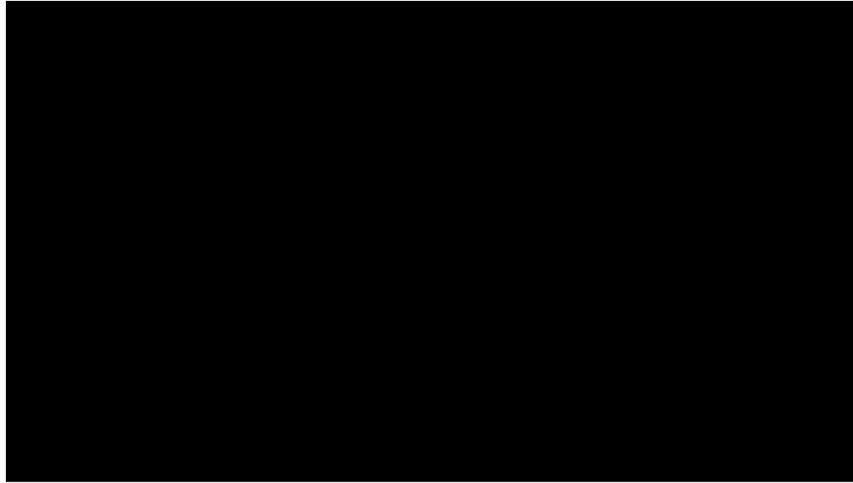
20

Guardianship

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Guardianship and Conservatorship

21



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Guardianship: “Incapacitated Person”

22

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

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Powers of a Guardian

23

- 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

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Guardianship (Slide 1)

24

Benefits

A capable, well-intentioned guardian can:

- Protect an incapacitated victim from future harm by perpetrator
- Pursue perpetrator accountability on victim's behalf

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Guardianship (Slide 2)

25

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

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POA vs. Guardianship

26

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

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Signs of Abuse by Agent or Guardian

27

- 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

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Supported Decision-making

28

- Guardianship alternative
- Respects ability
- Preserves autonomy
- Improves quality of life
- Availability varies from state to state
- <http://supporteddecisionmaking.org/>

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What if You Suspect Abuse by a Guardian or Agent?

29

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

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Summary

30

- 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.

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Video Presenters

31

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

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Thank You

32

- Special thanks to Terra Nova Films for the ongoing working
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- www.terranova.org



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Staying Connected to NCALL and Other Advocates

33

- 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



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34

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